In the Supreme Court of the United States.

OCTOBER TERM, 1902.

WILLIAM W. WATTS AND DAVID A. Sachs, petitioners,
v.
THE UNITED STATES, HENRY C. PETTIT, United States marshal for the district of Indiana, and Robert Metzger, sheriff of Marion County, Ind.

Nos. 15 and 16, Original.

ON HABEAS CORPUS AND CERTIORARI TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES.

The argument of counsel for petitioners, both in their briefs and at the bar, relates exclusively to the question of jurisdiction, or rather to the manner in which the District Court exercised its jurisdiction over the property in dispute. They fail to make the obvious point, suggested from the bench, that even if the District Court had jurisdiction, the acts charged against their clients having been performed, if at all, only in their capacity as attorneys, did not legally constitute contempt.

24740—03

In the only issues thus presented, involving as they do the maintenance and proper enforcement of the Federal jurisdiction in bankruptcy, the Government is deeply interested. With the questions arising out of the contempt cases proper, not adverted to by the other side, it has no concern. As heretofore stated, those were matters for the District Court to determine, and for this court, if it sees fit, to review. It may be noted, however, that acts similar to those committed by petitioners have been held to constitute contempt in the following cases: *In re Vogel*, 2 N. B. R., 427; Fed. Cas. 16, 983. *In re Ulrich*, 8 N. B. R., 15; Fed. Cas. 14, 328. *In re Litchfield*, 13 Fed. Rep., 1866; *Ex parte Davis*, 112 Fed. Rep., 139; *Royal Trust Co.* v. *Washburn, etc., Ry. Co.*, 113 Fed. Rep., 531. See particularly *Anderson* v. *Comptois*, 48 C. C. A., 1, and *note*, p. 7; also reported in 109 Fed. Rep., 971.

I.

Only a pretense of argument is made by counsel for petitioners against the jurisdiction of the District Court over the property of M. Zier & Co. The fact that within four months prior to the filing of the petition therein, that company had committed acts of bankruptcy by making preferences denounced by the statute is not and can not be denied. Besides, the amendment of February 5, 1903, to the Bankruptcy Act, makes the appointment of a receiver of a State court because of insolvency an act of bankruptcy. In addition to the reasons stated in my original brief,

which support the view that that amendment was intended to apply to cases where a receiver had been appointed within four months of the passage of the act, is the fact that the original act expressly provided (sec. 70 b) that proceedings commenced under State insolvency laws before its passage should not be affected by it, while the amendatory act contains no such provision.

That the jurisdiction of the District Court is not seriously attacked, is shown by the fact that counsel for Watts unqualifiedly state (Fairleigh and Flexner's Brief, p. 15; Brief of same for Watts on Final Hearing, p. 26) that the question here is not as to the *right of possession*, but of *proper procedure;* and Mr. Miller, in the end, assumes practically the same position. (Original Brief, pp. 18-20; Supplemental Brief, p. 11.)

II.

According to my view of the facts, the question as to the authority of a bankruptcy court summarily to take property over which it has acquired jurisdiction from the possession of a State court or its officers, does not arise on this record. The District Court did not summarily seize the property of M. Zier & Co., but, as appears from the statements of the New Albany Trust Company, the receiver of the State court, and of the petitioner Watts, its attorney, the property was voluntarily surrendered to the receiver of the District court. The fact that the receiver of the State court was not authorized to make the transfer, does not affect the legality of the possession received by the

District Court, but was a matter wholly between the State court and its receiver. An order of the State court directing the surrender of the property could give the District Court no additional right to the possession. That right was already perfect.

III.

Assuming, however, for the sake of argument, that the property was summarily taken from the State court, it is apparent that, under the decisions of this court, summary action in such a case was authorized.

As heretofore stated, it is not asserted, as counsel have implied, that the rule of comity does not apply to bankruptcy cases. On the contrary, the importance of a due observance of that rule is fully recognized. But it is contended that the rule of comity has its limitations; that it is not so one-sided as to operate only on the Federal court, and that it ceases to apply when the State court becomes remiss in its duty, and fails to surrender property in its hands over which its jurisdiction has determined. In such a case, summary process to enforce the rightful jurisdiction of the Federal court is clearly justified.

Counsel urge that where the State court has ignored or refused the request made by the receiver of the United States court for the delivery of possession, the proper course is to appeal to the highest court of the State, and thence, if necessary, to this court. It would be curious, indeed, if the administration of the National Bankruptcy Law could be thus held up by a

State court. What would then become of the supremacy of the Constitution and laws of the United States? How does such weakness agree with the "incontrovertible principle," announced by this court, "that the Government of the United States may, *by means of physical force*, exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it?" (*Ex parte Siebold*, 100 U. S., 395.)

In support of their view as to what constitutes "proper procedure" in a case of this kind, counsel rely on what was said in *Johnson* v. *Bishop* (1 Woolworth, 324). As already stated, that was a suit by an *assignee* in bankruptcy in the Federal court to obtain property belonging to the bankrupt from a State sheriff, the latter having taken it upon an attachment issued to him out of the State court before the proceedings in bankruptcy were commenced. As shown by paragraph 5 of the headnote to that case, under the act of 1867 the Federal courts did not have exclusive jurisdiction of actions in behalf of *assignees* in bankruptcy; and if their rights were not regarded in the State courts, their remedy was under the twenty-fifth section of the Judiciary act of 1789, giving an appeal to this court.

But the authority of *receivers* or *marshals* in bankruptcy is not to be measured by that of *assignees* under the act of 1867 or *trustees* under the present act.

In *Bardes* v. *Hawarden Bank* (178 U. S., 531), Mr. Justice Gray referred to the fact that the Bankruptcy

Act of 1867 made a distinction between proceedings in bankruptcy, instituted by the petition and ending in a distribution of assets among the creditors and the discharge of the debtor, and suits at law or in equity brought by or against the *assignee* in reference to the alleged property of the bankrupt. Of the former (the bankruptcy proceedings proper), the jurisdiction of the Federal courts was said to be exclusive; as to the latter (suits by or against assignees), their jurisdiction was concurrent with the State courts.

In the same case the court pointed out that the act of 1898 also recognized this "essential difference between proceedings in bankruptcy on the one hand and suits at law or in equity on the other," and it was held that *trustees* under that act, like assignees under the act of 1867, could not summarily proceed against third parties in the District Court to set aside an alleged fraudulent transfer of property made within four months of the filing of the petition in bankruptcy.

The further observation in that case, that courts of bankruptcy could hardly be considered as empowered by the provisions of the Bankruptcy Act to authorize *receivers* or *marshals* forcibly to seize property in the hands of adverse claimants, was stated to have been an inadvertence and therefore withdrawn in the subsequent case of *Bryan* v. *Bernheimer* (181 U. S., 189, 197); and the right of a bankruptcy court to direct a *receiver* summarily to seize property in the hands of a third party who *claimed* to hold adversely was asserted.

It seems plain, therefore, that in *Bryan* v. *Bernheimer*,

where the question as to the authority of the bankruptcy courts in the matter of the appointment of *receivers* or *marshals* was for the first time seriously considered, the court perceived that, since those particular officers were only to be appointed "*in case it is necessary for the preservation of the property of the bankrupt,*" the right to authorize them to proceed summarily might in some cases be absolutely essential to the accomplishment of that purpose.

In *White* v. *Schloerb* it was held that the District Court sitting in bankruptcy had authority, by summary proceedings, to compel the return of property taken from it on a writ of replevin from a State court, sued out after the jurisdiction of the District Court had attached.

It is true that in *Metcalf* v. *Barker* (187 U. S., 165) the court said that "this cautious utterance * * * sustains, as far as it goes, the *converse* of the proposition when presented by a different state of facts."

As to just what is the converse of the proposition announced in *White* v. *Schloerb*, courts as well as lawyers may find it difficult to agree. But it is manifestly absurd to say that it is presented in this case. In *White* v. *Schloerb* the District court, at the time of the seizure of the property by the State Court, not only had the possession of the property, but the *right* of possession as well. In the present case, at the time of the alleged seizure of the property by the District Court, the State court had absolutely *no right* of possession. In *this* respect it may indeed be said that this case is the converse of *White* v. *Schloerb*.

IV.

Whether the manner in which the District Court obtained possession of the property be open to criticism or not, such possession, being coupled as it was with the exclusive right thereto, could not afterwards be disturbed, even by the court from which it was taken, unless it be that two wrongs make a right. In no case has it been held that a court which has been summarily dispossessed by another court having the exclusive right of possession, may retake what it has no further right to hold. It is futile to say that the "constructive possession" remained in the State court. Constructive possession is necessarily dependent on the right of possession, and at the time of the recaption, the right of possession, as well as the actual possession, was in the District Court.

V.

The facts of this case plainly show not only that the surrender of the property in dispute was voluntarily made by the receiver of the State court, but that the District Court would have been justified, if that had not been done, in summarily seizing the property. The attitude of the State court toward the Federal court is indicated by the order of January 24 enjoining the creditors of M. Zier & Co. from proceeding in any other court. This order undoubtedly was made for the express purpose of preventing proceedings in bankruptcy. When, therefore, the action of the State court in postponing for three weeks any *consideration* even of the petition of Connor, the

receiver of the District Court for the delivery of the property, is read in the light of this order of the State court, as well as its order of February 14, made shortly after the filing of that petition, enjoining Connor and the petitioning creditors in the bankruptcy suit, and ruling the latter for contempt, a deliberate attempt to defeat the jurisdiction of the District Court is evident. Surely in such case comity ceases to be a virtue, and recourse to the strong arm of the law for the purpose of upholding the Federal authority would be justified.

The necessity for prompt and forcible action by the Federal courts, in order to enforce the provisions of the National Bankruptcy Law, when one exists, even as against the State courts, is recognized by section 720 of the Revised Statutes, which provides:

> The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, *except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.*

Among the powers conferred upon the courts of bankruptcy by section 2 of the act of 1898, are—

> to (15) *make such orders, issue such process*, and enter such judgments, in addition to those specifically provided for, *as may be necessary for the enforcement of the provisions of this act.* (30 Stat., 546.)

And the Twelfth General Order in Bankruptcy provides:

> 3. Applications * * * *for an injunction to stay proceedings of a court* or officer of the

> United States, *or of a State*, shall be heard and decided by the judge.

Clearly then, when the law itself and the rules of this court make such a marked distinction between bankruptcy and other proceedings in the courts of a State, and expressly authorize the Federal courts to enforce their jurisdiction in bankruptcy by summary proceedings, the rule of comity in bankruptcy cases, where the property is sought by a receiver and not by an assignee, can not be the same as that which applies in other cases. A forced conception of what constitutes "proper procedure" should not, therefore, be allowed to defeat the Federal jurisdiction.

HENRY M. HOYT,
Solicitor-General.

APRIL 24, 1903.

O

FILE COPY.

1st Orig.

Office Supreme Court U.
FILED
MAR 23 1903
JAMES H. McKENNEY,
Clerk.

In re Watts, Pet'r.

Exhibit A, B & C, filed with Petition.

INDEX.

EXHIBIT A.—*Record Floyd Circuit Court.*

Complaint of Ryerson & Son	1–11
Summons and service	11–12
Order appointing New Albany Trust Company Receiver and directing continuation of business	13–15
Petition for advice and statement	16–21
Petition for advice	21–23
Order	24
Report and petition New Albany Trust Company Receiver, January 16	25–33
Order on report and petition New Albany Trust Company Receiver, January 16	34
Statement New Albany Trust Company Receiver, January 24, and notice to creditors	35–36
Order January 24	37–41
Petition New Albany Trust Company Receiver, February 14, concerning bankruptcy	41–49
Order thereon directing limited appearance	50–53
Order making Conner Receiver in bankruptcy party in Floyd Circuit Court	53
Statement New Albany Trust Company Receiver by Watts, attorney	55
Order ruling Watts for contempt	55
Tender resignation New Albany Trust Company Receiver	56–57
Order ruling Receiver for contempt	57
Petition for removal of New Albany Trust Company	59
Order removal and appointment of Kelso, Receiver	60–61
Petition Kelso, Receiver	62
Order issuing writ to sheriff	63–64
Certificate	64–65

EXHIBIT B—*Record District Court, United States.*

Petition in bankruptcy 66-68
Order subpœna and return 69-70
Petition Inland Steel Company for Receiver 71-73
Order appointing Conner Receiver and directing him to take property 74
Supplemental Petition 75-76
Order February 17 redirecting Conner to take property 77
Petition of Conner, Receiver, of February 21 and Exhibits 78-90
Order on Petition and citation for contempt 90-91
Order on trial for contempt of Kelso 92
Order docketing case in name of United States 92
Separate response and plea of W. W. Watts 93-115
Separate response and plea of D. A. Sachs 116-129
Replies, United States Attorney 129-130
Trial and judgment 131-132
Opinion 132-171
Bill of exceptions 171-172

EXHIBIT C.

Order making Conner, Receiver, party in Floyd Circuit Court and petition 173

INDEX.

	PAGES.
EXHIBIT A.	1–65
EXHIBIT B.	66–172
EXHIBIT C.	173–177

APPENDIX 1.

Exhibit A.

STATE OF INDIANA, } *Set.*
FLOYD COUNTY, }

BE IT REMEMBERED That on the 30th of December, 1902, the following complaint was filed in the office of the Clerk of the Floyd Circuit Court, to-wit:

STATE OF INDIANA, } *ss.*
FLOYD COUNTY, }

IN THE FLOYD CIRCUIT COURT.

JOSEPH T. RYERSON & SON, ... *Plaintiff,*

VS.

M. ZIER & CO., ... *Defendant.*

The plaintiff, Jos. T. Ryerson & Son, complaining of the defendant, M. Zier & Co., for first paragraph of complaint says that the plaintiff, Jos. T. Ryerson & Son is a corporation organized under the laws of the State of Illinois and that said defendant, M. Zier & Co. is a corporation organized

under the laws of the State of Indiana; that heretofore, to-wit: on the 15th day of October, 1901, the said defendant, M. Zier & Co. by its promissory note, a copy of which is filed herewith and made part of this paragraph of comp'aint marked Exhibit "A," promised to pay to the plaintiff Joseph T. Ryerson & Son by name of J. T. Ryerson & Son the sum of $3461.70, sixth days after said date with interest at seven per cent. from and after maturity until paid and attorneys' fees. That said note is due and remains wholly unpaid. Plaintiff further avers that said defendant, M. Zier & Company, is insolvent; that said defendant is indebted in a large amount of money to divers persons and corporations, to-wit, in the sum of $65000.00; that it is unable to meet its said obligation and that its creditors are threatening to enter suits against it; that the property and assets of said defendant corporation consist of a manufacturing plant in the City of New Albany, which is in operation and is now engaged in filling unfinished orders and working on unfinished contracts. That said defendant is now without means or money with which to continue the operation of said business. That if suits are instituted against said defendant and its property seized upon an execution or attachment the assets will be dissipated and the plant of the defendant be rendered of much less value to its creditors generally than if the said property be properly prese ved; that the property fund and profits of the business of said defendant are in danger of being lost and materially injured and destroyed unless a Receiver be immediately appointed to take charge of said property and hold the custody and possession thereof and to preserve the same until plaintiff's cause can be determined and until such further orders shall be made in this proceeding as the Court shall deem proper and necessary.

WHEREFORE plaintiff says that it is necessary that a Receiver be appointed to take charge of the property of

said defendant; that an emergency exists for the immediate appointment of said Receiver by the Judge of this Court, and it prays that said Receiver be appointed at once and that he be invested with such power and authority as the Court shall deem proper under the circumstances.

Said plaintiff for second paragraph of complaint against said defendant says that heretofore, to-wit: on the 15th day of October, 1901, the said defendant M. Zier & Co., by its promissory note, a copy of which is filed wi h and made part of this paragraph of complaint marked Exhibit "B," promised to pay to the plaintiff, Jos. T. Ryerson & Son by name of J. T. Ryerson & Son, the sum of $3470.26, seventy-five days after said date with interest at seven per cent. from and after maturity until paid and attorneys' fees. That said note is due and remains wholly unpaid. Plaintiff further avers that said defendant, M. Zier & Co. is insolvent; that said defendant is indebted in large a amount of money to divers persons and corporations, to-wit: in the sum of $65-000.00; that it is unable to meet said obligations and that its creditors are threatening to enter suits against it; that the prope ty and assets of said defendant corporation consist of a manufacturing plant in the City of New Albany, which is in operation and is now engaged in filling unfinished orders and working on unfinished contracts. That said defendant is now without means or money with which to continue the operation of said business. That if suits are instituted against sa'd defendant and its property seized upon an execution or attachment the assets will be dissipated and the plant of the defendant be rendered of much less value to its creditors generally than if the said property be properly preserved; that the property fund and profits of the business of said defendant are in danger of being lost and materially injured and destroyed unless a Receiver be

immediately appointed to take charge of said property and hold the custody and possession thereof and to preserve the same until plaintiff's cause can be determined and until such further orders shall be made in this proceeding as the Court shall deem proper and necessary.

WHEREFORE plaintiff says that it is necessary that a Receiver be appointed to take charge of the property of said defendant; that an emergency exists for the immediate appointment of said Receiver by the Judge of this Court; and it prays that said Receiver be appointed at once, and that he be invested with such power and authority as the Court shall deem proper under the circumstances.

Said plaintiff for third paragraph of complaint against said defendant says that heretofore, to-wit: on the 24th day of October, 1902, the said defendant M. Zeir & Co. by its promissory note, a copy of which is filed with and made part of this paragraph of complaint marked exhibit "C" promised to pay to the plaintiff, Jos. T. Ryerson & Son by name of Joseph T. Ryerson & Co, the sum of $1043.14 fifteen days after said date with interest at Seven per cent. from and after maturity until paid and attorneys' fees. That said note is due and remains wholly unpaid. Plaintiff further avers that said defendant, M. Zier & Co., is insolvent; that said defendant is indebted in a large amount of money to divers persons and corporations, to-wit: in the sum of $65000.00; that it is unable to meet its said obligations and that its creditors are threatening to enter suits against it; that the property and assets of said defendant corporation consist of a manufacturing plant in the City of New Albany, which is in operation and is now engaged in filling unfinished orders and working on unfinished contracts. That said defendant is now without means or money with which to continue the operation of said business. That if suits are

instituted against said defendant and its property seized upon an execution or attachment the assets will be dissipated and the plant of the defendant be rendered of much less value to its creditors generally than if the said property be properly preserved; that the property fund and profits of the business of said defendant are in danger of being lost and materially injured and destroyed unless a Receiver be immediately appointed to take charge of said property and hold the custody and possession thereof and to preserve the same until plaintiff's cause can be determined and until such further orders shall be made in this proceeding as the Court shall deem proper and necessary.

WHEREFORE plaintiff says that it is necessary that a Receiver be appointed to take charge of the property of said defendant that an emergency exists for the immediate appointment of said Receiver by the Judge of this Court, and it prays that said Receiver be appointed at once, and that he be invested with such power and authority as the Court shall deem proper under the circumstances.

Said plaintiff for fourth paragraph of complaint against said defendant, says that heretofore, to-wit on the 15th day of October, 1901, the said defendant, M. Zier & Co. by its promissory note, a copy of which is filed with and made part of this paragraph of complaint marked Exhibit "D," promised to pay to the plaintiff, Jos. T. Ryerson & Son by name of J. T. Ryerson & Son, the sum of $3478.84, ninety days after said date with interest at Seven per cent. from and after maturity until paid and attorneys' fees. That said note is due and remains wholly unpaid. Plaintiff further avers that said defendant, M. Zier & Company, is insolvent; that it is unable to meet its said obligations and that its creditors are threatening to enter suits against it; that the property and assets of said defendant corporation consist of a

manufacturing plant in the City of New Albany, which is in operation and is now engaged in filling unfinished orders and working on unfinished contracts. That said defendant is now without means or money with which to continue the operation of said business. That if suits are instituted against said defendant and its property seized upon an execution or attachment the assets will be dissipated and the plant of the defendant be rendered of much less value to its creditors generally than if the said property be properly preserved; that the property fund and profits of the business of said defendant are in danger of being lost and materially injured and destroyed unless a Receiver be immediately appointed to take charge of said property and hold the custody and possession thereof and to preserve the same until plaintiff's cause can be determined and until such further orders shall be made in this proceeding as the Court shall deem proper and necessary.

WHEREFORE plaintiff says that it is necessary that a Receiver be appointed to take charge of the property of said defendant; that an emergency exists for the immediate appointment of said Receiver by the Judge of this Court, and it prays that said Receiver be appointed at once, and that he be invested with much power and authority as the Court shall deem proper under the circumstances.

Said plaintiff for fifth paragraph of complaint against said defendant says that heretofore, to-wit: on the 2nd day of December, 1901, the said defendant, M. Zier & Co. by its promissory note, a copy of which is filed with and made part of this paragraph of complaint marked Exhibit "E," promised to pay to the plaintiff, Jos. T. Ryerson & Son by name of J. T. Ryerson & Son, the sum of $3000.00, sixty days after said date with interest at Seven per cent. from and after maturity until paid and attorneys' fees. That

said note is due and remains wholly unpaid. Plaintiff further avers that said defendant, M. Zier & Co., is insolvent; that said defendant is indebted in a large amount of money to divers persons and corporations, to wit: in the sum of $65000.00; that it is unable to meet its said obligations and that its creditors are threatening to enter suits against it; that the property and assets of said defendant corporation consist of a manufacturing plant in the City of New Albany, which is in operation and is now engaged in filling unfinished orders and working on unfinished contracts. That said defendant is now without means or money with which to continue the operation of said business. That if suits are instituted against said defendant and its property seized upon an execution or attachment the assets will be dissipated and the plant of the defendant be rendered of much less value to its creditors generally than if the said property be properly preserved; that the property fund and profits of the business of said defendant are in danger of being lost and materially injured and destroyed unless a Receiver be immediately appointed to take charge of said property and hold the custody and possession thereof and to preserve the same until plaintiff's cause can be determined and until such further orders shall be made in this proceeding as the Court shall deem proper and necessary.

WHEREFORE plaintiff says it is necessary that a Receiver be appointed to take charge of the property of said defendant; that an emergency exists for the immediate appointment of said Receiver by the Judge of this Court, and it prays that said Receiver be appointed at once, and that he be invested with such power and authority as the Court shall deem proper under the circumstances.

WHEREFORE said plaintiff demands judgment against said defendant for the sum of $15000.00 and prays for the

appointment of a Receiver to charge and possession of the property funds and assets of said defendant, and that the Court shall make such orders as shall be necessary and proper for the preservation of said property for the continuance of said business for the purpose of completing unfinished contracts, and such other and further orders as the Court shall deem necessary and proper.

W. W. & J. R. WATTS,

Attorneys for Plaintiffs.

EXHIBIT "A."

Dec. 17th

$3461.70 $3461‡ New Albany, Ind., Oct. 15–1901

Sixty days after date we promise to PAY TO THE ORDER OF J. T. RYERSON & SON THIRTY-FOUR HUNDRED SIXTY-ONE & 70-100 DOLLARS.

NEGOTIABLE AND PAYABLE AT

Copy. NEW ALBANY NATIONAL BANK.

Without any relief whatever from Valuation or Appraisement Law, for value received, with interest at Seven per cent. per annum from and after maturity until paid, and Attorneys Fees. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

No. 828 M. ZIER & Co.

Due Dec. 17. By H. E. Eury,

Charged E. H. *Secy.*

EXHIBIT "B."

Jan. 1st, 1902.

$3470.26 $3470‡ New Albany, Ind., Oct. 15–1901.

Seventy-five days after date we promise to PAY TO THE ORDER OF J. T. RYERSON & SON THIRTY-FOUR HUNDRED SEVENTY & 26-100 DOLLARS.

NEGOTIABLE AND PAYABLE AT THE
NEW ALBANY NATIONAL BANK.

Without any relief whatever from Valuation or Appraisement Law, for value received, with interest at Seven per cent. per annum from and after maturity until paid, and Attorneys Fees. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

No. 829 M. ZIER & Co.

Due Jan. 1, 1902. By H. E. Eury,

Charged Back. *Secy.*

Copy.

EXHIBIT "C."

$1043.14 New Albany, Ind., Oct. 24, 1902.

Fifteen days after date, we promise to PAY TO THE ORDER OF JOSEPH T. RYERSON AND CO. TEN-HUNDRED AND FORTY-THREE 14-100 DOLLARS.

NEGOTIABLE AND PAYABLE AT THE

Copy. NEW ALBANY NATIONAL BANK.

Without any relief whatever from Valuation or Appraisement Law, for value received, with interest at Seven per cent, per annum from and after maturity, until paid, and Attorneys Fees. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

No. 1729. M. Zier & Co.

Due Nov. 11-02. By M. Zier,

Charged Back Dec. 2-02. B. S. *V. Pres. & Treas.*

EXHIBIT "D."

Jan. 16th.

$3478.84 $3478‡ New Albany, Ind., Oct. 15, 1901.

Ninety days after date we promise to PAY TO THE ORDER OF J. T. RYERSON & SON, THIRTY-FOUR HUNDRED SEVENTY-EIGHT & 84-100 DOLLARS.

NEGOTIABLE AND PAYABLE AT THE

Copy. NEW ALBANY NATIONAL BANK.

Without any relief whatever from Valuation or Appraisement Law, for value received, with interest at Seven per cent per annum from and after maturity until paid, and Attorneys Fees. The drawers and endorsers severally waive presentment for payment, protest and notice of protest and non-payment of this note.

No. 830 M. ZIER & CO.

Due Jan. 16, 1902. By H. E. Eury,

Charged Back E. H. *Secy.*

EXHIBIT "E."

$3000.00 $3000‡ New Albany, Ind., Dec. 2-1901.

Sixty days after date we promise to PAY TO THE ORDER OF J. T. RYERSON & SON, THREE-THOUSAND & 00-100 DOLLARS.

NEGOTIABLE AND PAYABLE AT THE
NEW ALBANY NATIONAL BANK.

Copy.

Without any relief whatever from Valuation or Appraisement Law, for value received, with interest at Seven per cent. per annum from and after maturity until paid, and Attorneys Fees. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

Charged Back E. H. M. ZIER & CO.
No. 942 By M. Zier,
Due Feb. 3, 1902. *V. Pres. & Treas*

Upon which complaint the following summons was issued to-wit:

THE STATE OF INDIANA.

TO THE SHERIFF OF FLOYD COUNTY, GREETING:

We command you to summon

M. ZIER & CO.

if it be found in your bailwick, personally to appear before the Honorable Floyd Circuit Court, on the second day of the next term thereof, to be holden at the Court House in

the City of New Albany, on the Second Monday of January, 1903, then and there to answer the complaint of

JOS. T. RYERSON & SON

and of this writ make due service and return.

Witness CHARLES B. SCOTT, Clerk of said Court, and the Seal thereof hereto affixed at the Court House in New Albany, Indiana, this 30th day of December 1902.

CHARLES B. SCOTT,
Clerk Floyd Circuit Court.

By William F. Ruoff,
Deputy.

[SEAL.]

Came to hand December 30th 1902 at 3 o'clock P. M. Served as commanded on the within named M. Zier & Co. by reading this writ to and in the presence and hearing of Michael Zier, Vice President and Treasurer of the M. Zier & Co., there being no President of the said M. Zier & Co. found in my bailwick. Done in Floyd County, Indiana, this 30th day of December 1902.

LOUIS C. HIPPLE,
S. F. Co.

Fees $1.00.

AND afterwards at Chambers In Vacation of said Floyd Circuit Court on the 30th day of December 1902 before the Hon. William C. Utz Sole Judge among other the following proceedings were had to-wit:—

"FLOYD CIRCUIT COURT,

IN VACATION.

Jos. T. Ryerson & Son;
Plaintiff,
vs.
M. Zier & Co.,
Defendant.
} Order appointing Receiver.

This day came the plaintiff Jos. T. Ryerson & Son, by W. W. & J. R. Watts, attorneys and enter a motion herein to appoint a Receiver herein to take charge of the assets of the defendant corporation and preserve the same under the orders of this Court as shall from time to time be made.

And came the defendant M. Zier and Company by M. Zier its President and by Jewett & Jewett attorneys and entered their appearance to the complaint herein and to the motion for the appointment of a Receiver.

And the parties by counsel having been heard and the pleadings herein being before the Court, and the Court being sufficiently advised it is considered by the Court that said motion shall be sustained and it is now hereby so adjudged and ordered.

It is further ordered and adjudged that The New Albany Trust Company be and it is hereby appointed Receiver of said M. Zier and Company to take charge and possession of all assets of said M. Zier & Company of whatever nature or wheresoever situated and hold and preserve the same subject to the further orders of the Court.

Said Receiver shall report at the next term of Court at as early day as is practicable an Inventory of all the assets coming to his hands and shall then report any recommendations he may have to make with respect to said estate, its conduct and its operation.

Said Receiver shall proceed to collect any moneys or other property due, or to become due to said estate and as

far as may be, shall continue the business of said M. Zier & Company and shall fulfill and complete any contracts now on hand and incompleted and until the further order of the Court shall continue the operation of said business as nearly as may be, as a going concern with power to employ such reasonable amount of help therein as may be necessary and to employ counsel to advise with and assist him in the conduct of its trust.

Said receiver is further authorized to make purchases of any necessary materials or any material or other goods necessary in the conduct of said business not to exceed in all, without further order of Court the total sum of $2500.00.

Said Receiver shall insure the property in this estate in such sum as said Receiver deems reasonable not however to exceed the sum of $10000.00. Said Receiver is further authorized and empowered to purchase such indemnity insurance against accident to employees as said Receiver may deem nesessary.

Before entering upon the duties of said Receivership, said Receiver shall, as required by law, take the oath of office for the faithful discharge of the duties of said Receivership and obedience to the orders of this Court, or the Judge thereof. Whereupon came the New Albany Trust Co., the Receiver herein and took the oath of office as required by law and accepted said trust.

Said Receiver is further authorized and empowered to sue and defend in its own name as Receiver any suits necessary to be prosecuted or defended for the protection or enforcement of the trust herein.

And power and jurisdiction is hereby reserved to enlarge, amend or restrict the duties and powers of said Receiver from time to time as may be deemed necessary.

December 30th, 1902. WILLIAM C. UTZ,

Judge."

AND afterwards In Vacation, at Chamber of said Floyd Circuit Court on the said 30th day of December, 1902, before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:—

Joseph T. Ryerson & Son,
vs.
M. Zier & Co. } In Vacation.

Come now the New Albany Trust Company and files in the office of the Clerk of Floyd County Court its acceptance in writing as receiver together with the oath required by the appointment herein endorsed thereon, which reads as follows:

"STATE OF INDIANA,
County of Floyd. } *ss.*

I, Fred Sauer, Secretary of the New Albany Trust Company, for and on behalf of said Company, do hereby accept the appointment of Receiver in the cause now pending in the Floyd Circuit Court, wherein the Joseph T. Ryerson & Son is plaintiff and the M. Zier & Co. is defendant, and do hereby solemnly swear that The New Albany Trust Company as such Receiver will faithfully and honestly discharge the duties of said receivership in obedience to the orders of the Floyd Circuit Court and of the Judge thereof.

FRED SAUER.

Subscribed and sworn to before me, this 30th day of December 1902

CHARLES B. SCOTT,
Clerk F. C. C.
By William F. Rouff,
Deputy."

AND afterwards, In Vacation, At Chambers of the Floyd Circuit Court on the 3rd day of January 1903, before the Hon.

William C. Utz, Sole Judge among other the following proceedings were had to-wit:—

Joseph T. Ryerson and Son,
vs.
M. Zier & Co. } In Vacation.

Comes now the New Albany Trust Company, receiver in the above matter, and presents to the Judge of the Floyd Circuit Court, in Chambers its verified petition, which is in words and figures following:—

IN THE FLOYD CIRCUIT COURT.

"STATE OF INDIANA, } ss.
County of Floyd.

Jos. T. Ryerson and Son,
vs.
M. Zier & Company.

The New Albany Trust Company, receiver in the above entitled cause, respectfully reports to the Court that at the time of the appointment of this receiver, said M. Zier and Company was indebted to workmen, being machinists, boilermakers and other persons engaged in manual and physical labor in and about the plant of said concern for three days to-wit:— December 27, 29 and 30th that an itemized statement of such indebtedness if filed with and made part of this petition and referred to as Exhibit "A" that said M. Zier & Co. being a corporation and being insolvent at the time of the appointment of this Receiver; that this receiver believes that said amount due for wages is a preferred claim against the assets in its hands; that said sums except two items hereinafter referred to are due to mechanics and

laborers who are dependent upon their daily labor and wages for their support, and it would be a hardship for said persons to be compelled to file their claims individually and await the settlement of the estate for their payment; that to file said claims separately would involve not only delay but would increase the expense of the Administration of the trust, and that this Receiver is willing to advance sufficient money on account of said trust to pay said labor claim if the Court shall so direct and order them to be paid by the Receiver as preferred claims against the assets in its hands.

That the only two items in said statement attached hereto, which are regarded as being doubtful, preference and priority, are the three days of M. Zier, who is the Vice-President of said Company, amounting to $16.00 and three days for J. E. Eury who was the Secretary of said Company amounting to $15.00.

This Receiver therefore asks the direction an order of the Court in the matter.

Respectfully submitted,
THE NEW ALBANY TRUST COMPANY,
By Fred Sauer.

Fred Sauer, being shown on his oath says that he is the Secretary of the New Albany Trust Company and makes this affidavit on behalf of said Company; that the statements contained in the foregoing petition are true in substance and fact as he verily believes.

FRED SAUER.

Subscribed and sworn to before me this 3rd day of January 1903.

ELIZA A. TABLER,
Notary Public.

[SEAL.]

My Commission expires Oct. 7, 1906.

EXHIBIT "A"

PAY ROLL FOR M. ZIER & CO.

Beginning Dec. 27th ending 30th, 1902.

NAME.	HOURS.	RATE.	AMOUNT.
Allard	27	.19	$5 13
Armstrong	27	.15	4 05
Atkins, C	27	.12½	3 37
Atkins, W. A	13	.12½	1 62
Boersig, Geo	27	.24	6 48
Boersig, Ed	27	.05	1 35
Bruder, Harry	28	.16	4 48
Bruder, O	54	.14	7 56
Buckingham	27	.25	6 75
Bryant, Joe	27	.11	2 97
Bryant, John	27	.13½	3 65
Bybee	27	.12½	3 37
Cleveland	27	"	3 37
Carpenter	18	.06	1 08
Dixon, C	27	.08	2 16
Duvall, Joe	27	.17½	4 75
Duvall, Jim	27	.12½	3 37
Dunn	27	"	3 37
Cookingdoffer	27	.05	1 35
Elliott	27	.05	1 35
Embry	49	.22½	11 03
Frederick	27	.15	4 05
Guthrie	18	.20	3 60
Gray	27	.15	4 05
Hopkins	27	.12½	3 37
Higgins	29	"	3 63
Hammer	20	"	2 50
Long, Sr	27	.20	5 40

NAME.	HOURS.	RATE.	AMOUNT.
Long, H	27	.10	2.70
Long, R	31	.24	7.44
Lines	27	.27½	7.43
Maupin	9	.12½	1.13
Miller, W. H	27	.27½	7.43
Miller, John	37	.12½	4.63
McKenna	27	.25	6.75
Monical	27	.15	4.05
McIntyre	27	.06	1.62
Stone, L	27	.22	5.94
Stone, Ed	27	.15	4.05
Sinkhorn	27	.12½	3.37
Schmitt	30	.17½	5.25
Story, Lewis	27	.12½	3.37
Schlageter	19	"	2.38
Sarles	27	.05	1.35
Schuler	27½	.12½	3.43
Scales, Joe	27	.07½	2.03
Veron, Joe	27	.17½	4.73
Van Winkle	27	.22½	6.08
Vernia	28	.12½	3.50
Widman, Jr	18	.07	1.26
Widman, Sr	27	.25	6.75
Weidman	27	.11	2.97
Welz, Geo	47	.06	2.82
Wells, C	27	.06	1.62
Ward	27	.12½	3.37
Wehner	30	.06	1.80
Young	45	.25	11.25
Raglon	27	.17½	4.73
Baugh	9	.10	.90
Brazil	27	.22½	6.08

NAME.	HOURS.	RATE.	AMOUNT.
Foust	14	23	3 22
Dixon	40	12½	5 00
Woodfill	31	13½	4 19
Beard	5	10	50
Davison	27	17½	4 73
Duvall, Bwn	27	22½	6 08
Sarles	19½		1 33
Leaf	14	12½	1 75
Fogle	18	10	1 80
Austin	18	12½	2 25
Walters	20	17½	3 50
Normally, M	20	14	2 80
Normally, Jim	20	17½	3 50
Hughes, Jim	20	14	2 80
Slattery	20	23	4 60
Moore	14	15	2 10
Buckingham, Cin. Job, 73 hrs. time 25c per hour		$18 75	
Drew from office		9 45	
			8 80
Foust, Geo., McHenry Job, 440 hrs. time 23c per hour		$101 20	
Drew from office		68 83	32 37
Zier, M., 3 days			19 00
Eury, H. E., "			15 00
Eury, J. G., "			6 00
Zier, L. M., "			2 00
Zier, Ed., "			1 00
TOTAL			$372 72

And the Court being satisfied it will be to the interest of said trust to pay the persons named in the pay roll attached to said petition the several amounts due them for wages for

labor performed for such insolvent corporation for the three days immediately preceeding the appointment of said Receiver for manual labor performed by said employees, it is now therefore ordered by the Judge of said Court that the said New Albany Trust Company as Receiver of the M. Zier and Company pay to the persons named in the pay-roll attached to the petition herein, the several amounts due them (except to M. Zier and H. E. Eury officers of said Company) the aggregate amount to be paid under this order being the sum of $341.72 and that upon making such payment said Receiver shall be subrogated to the performance and lien claimed and held by said laborers, mechanics and machinists for their said several claims as preferred creditors, and shall be allowed credit therefor in its accounts as and for the payment of a preferred claim.

Dated this 3rd day of January, 1903.

WILLIAM C. UTZ,
Judge Floyd C. C.

And afterwards in vacation of said Floyd Circuit Court on the 9th day of January, 1903, the following petition was filed to-wit:—

FLOYD CIRCUIT COURT.

STATE OF INDIANA, }
County of Floyd. }

Joseph T. Ryerson & Son,
Plaintiff.
vs.
M. Zier & Company,
Defendants.

PETITION OF RECEIVER FOR INSTRUCTIONS AS TO CONTRACT WITH ANGUILLA COTTON OIL COMPANY.

Comes the New Albany Trust Company, Receiver of M. Zier & Company, under order of this Court in the above

styled cause, and for its report and petition of its action thereon, it submits to the Court the following facts concerning a contract between M. Zier & Company and the Anguilla Cotton Oil Company, and asks the instructions of this Court, to-wit:—

That heretofore a contract was entered into between M. Zier & Company and the Anguilla Cotton Oil Company whereby it was agreed that for the sum of $3245.00, said M. Zier & Company should construct and set up for the said Anguilla Company at its plant in the State of Mississippi, ten certain specified tanks, made of iron, for which the said Zier Company was to receive, upon the satisfactory setting up of said tanks, the total sum of $3245.00; that in pursuance of said contract, the said Anguilla Company, advanced and paid to the said Zier Company the total sum of $1,081.67, and the same has been credited on the books of the said Zier Company to the account of the said Anguilla Company; that since the appointment of the receiver herein, the said Anguilla Company has made demand of the receiver that it fulfill the contract of the said Zier Company, but because of the complications of the receivership with respect to the payment of the said money theretofore to the said Zier Company, and because of the large expense which will be necessary in the payment of freight and the setting up of said tanks in Mississippi, this petitioner has been in doubt as to what it should do; that after consultation with the representatives of the Anguilla Company and the said M. Zier Company, it has finally agreed upon the settlement of the matter upon the following conditions, to-wit:—

There are eight of said tanks of a certain size which are now ready for shipment. There are two additional tanks of a larger size yet to be built. The cost and expense of shipment and setting up of all of said tanks would range

from $850.00 to $1100.00, as estimated by said Zier Company and the said Anguilla Company shall receive at New Albany on board the cars, eight tanks now ready for shipment and the two tanks hereafter to be completed. That from said $3245.00, the original contract price, there shall be deducted the sum of $850.00, as an allowance to said Anguilla Company, for the payment of freight and setting up of said tanks in said State of Mississippi, so that when the matter is finally disposed of said Anguilla Company shall have credit for said sum of $850.00 and said $1081.67 already paid, or a total of $1931.67, and will pay this petitioner the sum of $1313.33. Said $1313.33 is to be paid to this petitioner, as stated, upon delivery of said tanks to said cars at New Albany, and the same shall be paid in such installments as the tanks shipped respectively bear to the total amount to be paid; that is to say that upon the shipment of the eight tanks, said Anguilla Company shall pay the proportionate value thereof out of $1313.33, to wit: $843.87, and upon the shipment of the other two tanks the remainder thereof shall be paid.

Your petitioner would further show to the Court that it believes this settlement of the matter is for the best interests of the estate. That the metal making up said tanks has been cut for special sizes under the terms of the contract, and that unless this plan of settlement is carried out, great loss will result to the estate herein, and it now recommends that it be instructed and ordered to carry out the settlement as agreed upon as stated; that said agreement has been made subject to the approval and ratification of the Court.

WHEREFORE Your petitioner prays that it have an order accordingly, and for all further and other proper relief.

W. W. & J. R. WATTS,

Attorneys for New Albany Trust Company, Receiver.

Fred Sauer says he is the Secretary of the New Albany Trust Company, Receiver of M. Zeir & Company, and that he has active charge of the management of the Receivership of M. Zier & Company, and is fully acquainted with the facts stated in the foregoing petition, and that the facts there stated are true.

FRED SAUER.

Subscribed and sworn to by Fred Sauer before me this 9th day of Jan'y, 1903.

CHARLES B. SCOTT,
Clerk F. C. C.

(Filed Jan. 9, 1903. CHARLES B. SCOTT, *Clerk F. C. C.*)

AND upon the filing of the foregoing petition, In Vacation at Chamber of said Floyd Circuit Court on the said 9th day of January, 1903 before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to wit:—

FLOYD CIRCUIT COURT,
IN VACATION.

STATE OF INDIANA, }
County of Floyd. }

Joseph T. Ryerson & Son, *Plaintiff.*
M. Zier & Company, *Defendant.* } Order.

This day came New Albany Trust Company, receiver of M. Zier & Company by W. W. and J. R. Watts its attorneys, and files its petition herein seek'ng the advice and instruction of the Court concerning the disposition of the contract between M. Zier & Company and the Anguilla Cotton Oil Company and certain tanks made thereunder and the Court being fully advised and it appearing to be

for the best interests of the estate herein, it is now hereby ordered that the Receiver herein shall deliver to the Anguilla Cotton Oil Company on the cars at New Albany, Indiana the ten tanks contracted for under said contract, at such times as the same may be completed by the Receiver herein and upon the payment of $1,313.33 to said Receiver. And it appears to the Court that eight of said tanks are now completed, the same shall be immediately delivered to said cars upon the payment to the said Receiver of so much of said cash as the value of said tanks under said contract bear to the whole of said sum of $1,313.33 to-wit: $844.87 and that when said other two tanks are completed they shall be delivered to said cars upon the payment to said Receiver of the balance of said total sum of $1,313.33 to-wit: $469.46 then remaining unpaid.

January 9th, 1903. WILLIAM C. UTZ,
Judge.

And afterwards at the January Term, 1903 of said Floyd Circuit Court on the 16th day of January, 1903, the Honorable William C. Utz, presiding, the following Report and Petition was filed in open Court, to-wit:—

FLOYD CIRCUIT COURT

Joseph T. Ryerson & Son, *Plaintiff.*
vs.
M. Zier & Company, *Defendant.*

REPORT AND PETITION OF NEW ALBANY TRUST CO., RECEIVER.

Comes the New Albany Trust Company, Receiver herein and files this its report and petition herein, to-wit:

I.

Immediately upon it appointment and qualification herein, it took possession of the office and plant of M. Zier & Company in New Albany, and found therein a lot of office furniture and fixtures, a lot of machinery and tools, a lot of merchandise or material, the books of account of M. Zier & Company, and the accounts therein. It then proceeded with an inventory of the property coming to its hands with an appraisement thereof by Wm. M. Mix and S. J. Gardner, residents and householders of the City of New Albany, who were sworn to return a true, just and correct valuation of all the property, credits, rights and demands of the said M. Zier & Company, as exhibited by and coming to the hands of this Receiver. The petitioner now files herewith as a part hereof said inventory and appraisement and shows the following summary of the items therein contained, to-wit:—

Value of machinery, tools, etc	$ 6,410.50
Value of merchandise or material	8,572.77
Value of office furniture and fixtures	188.00
Value of accounts owing M. Zier & Co. considered good and collectable	9,286.37
Value of accounts owing to M. Zier & Co. doubtful of collection	3,877.17
Value of lease hold	100.00
TOTAL	$28,434.81

As a part of the assets of this estate considered by the appraiser, but not included in above, there are a number of contracts between M. Zier & Company and other persons wherein the said M. Zier & Company have heretofore agreed to supply certain material and labor for certain sums of

money specified, and petitioner, now, refers to that part of said inventory marked "Estimated Value of Unfinished Contracts," wherein these matters are set forth. Some of said contracts were partially filled, but there is yet more labor and material to be furnished on them before all of the money consideration therefor shall be paid by the debtors. On some other of said contracts, none of the material has been delivered though some labor has been performed in making up the material, and other labor and said material is yet to be furnished by said M. Zeir & Company before the consideration thereof shall be paid. On others of said contracts said M. Zier & Company have heretofore received substantial sums of money advanced on account thereof, and this Receiver is in some doubt as to what he shall do with respect to the fulfillment of such contracts, to-wit:

First.—There is a contract with Grainger & Company of the City of Louisville, Kentucky, for the erection of two cold storage tanks. Granger & Company are to pay the total sum of $860.00 therefor on completion thereof. The Material has been delivered to Grainger & Company's premises for the purpose of completing said contract, and there is yet about the sum of $200.00 of labor &c to be put upon said work to complete same. It appears now that said Grainger & Company will set off against the money consideration moving from them on said contract. With respect to this contract, the Receiver is going ahead with its completion, and for the purpose of having paid to it such money as is the difference between the amount of said advancement and the total sum Grainger & Company agreed to pay.

Second.—J. E. & F. Walter agreed to pay M. Zier & Company $1,750.00 for two 66 inch boilers and attachments as specified in the agreement. Said boilers and attachments are now in the course of building, but it will require the

expenditure of about $500.00 more than has already been spent to put them in a state of completion whereupon the balance of the money coming from J. E. & F. Walter may be paid. But it appears that the said Walters have advanced to the said M. Zier & Company the sum of $1,000 on said contract, and, inasmuch, as nothing on said contract has been delivered to the said Walters, this petitioner is advised that the said Walters stand in the position of creditor of said M. Zier & Company, only. And, in so much as the completion of said contract can only be done at a great loss to this estate, this Receiver recommends that it be instructed to report some new arrangement with said Walters rather than that it carry out the old contract.

Third.—Houston, Stanwood & Gamble Company contracted with said M. Zier & Company for two 66 inch by 18 feet, and one 66 inch by 16 feet boilers, said Houston, &c. to pay the total sum of $1,316.95 therefor. After the completion of said boilers, the same were billed to said Houston &c., said bill showing the number of said boilers. Same were left in the yard of M. Zier & Company as was customary between the parties; they were treated as the property of the said Houston &c. who paid $1,000.00 on account of said contract. It was customary between the parties to have boilers made and to let them lie in said yards until shipped according to the order and instructions of the said Houston &c. Petitioner is advised that the said property belongs to the said Houston &c. upon the payment by them of the balance owing upon said contract, to-wit: $316.95.

Fourth.—M. Zier & Company agreed to build for J. B. Speed & Company at Speeds, Indiana, a cement bin for the total sum of $1,075.80. About $788.89 worth of material therefor has already been delivered at said place on account of said contract, and it will cost about $175.00 to complete

said contract. Said J. B. Speed & Company have advanced to M. Zier & Company the sum of $371.75, and when said contract is completed the balance of $704.05 will be due and owing this Receiver. Under these circumstances, the petitioner recommends that said work be completed, and will continue to that end unless otherwise ordered.

This petitioner reports that there are other contracts for material and labor partially completed, but which are not complicated with advancements. And as to these, petitioner is now going ahead with the work of completing the several items for the purpose of delivery and payment thereupon.

It shows to the Court that its total receipt from all sources from the date of its appointment to January 13, 1903 is $3,461.77 while its total disbursements are $1,617.95, the details of all of which are to be found on the sheet attached hereto as a part hereof marked "Receipt and Disbursements."

II.

This petitioner would further show to the Court that the following state of facts exist with respect to its trust herein, to-wit:

There are on file in the office of M. Zier & Company the following contracts with divers presons and corporations for the delivery of the things and upon the prices indicated which contracts have heretofore been made by said M. Zier & Company, but upon which neither labor nor material has been furnished or made or advancements paid, viz:

Bedford Quaines Co., Bedford, Ind.

1 36-inch boiler. . . . . $ 230.00

Pittsburg Filter Mfg. Co., Pittsburg, Pa.

2 48-inch filters. 190.00

James McWilliams & Co., Louisville, Ky.	
1 30-inch tank	32.00
5 Lengths 20-inch pipe	115.00
1 36-inch tank	44.00
1 Brine tank	145.00
Louisville Soap Co., Louisville, Ky.	
2 16-feet soap tanks	1,100.00
Bedford Steam Stone Works, Bedford, Ind.	
1 30-inch x 60 foot smoke stack	140.00
Repairing one 60-inch boiler	125.00
W. E. Caldwell Co., Louisville, Ky.	
Material for one 10-foot x 6 foot tank	65.00
E. P. Slider, New Albany, Ind.	
1 50-horsepower portable boiler	600.00
Union Cement Lime Co., Louisville, Ky.	
2 50-inch x 22-feet boilers	1,398.00
United Gas & Electric Co., New Albany, Ind.	
1 Breeching	1,750.00
Union Breeching & Finishing Co., Greenville, S.C.	
Boilers, Drum, Long Turn Bend, six extra Heavy Eatons, Valves, Heater, etc., sold through International Steam Engineering Co.	5,980.15
TOTAL FACE VALUE OF CONTRACTS	$11,914.15

From the best sources of information attainable petitioner is informed that there is a profit of about 20 per cent. under normal conditions in the fulfillment of these contracts, and that there is a profit to be made in fulfilling each of them. It would show that there are many inquiries from customers and prospective customers, and that it believes, and therefore, alleges, that if this plant is to continue in

operation it can have additional business and can keep said plant reasonably busy.

It shows that there is now on hand about $8,500.00 worth of material some of which is raw and some worked material, and that better prices can be obtained in working it all up under contracts than selling it as it now is.

III.

This petitioner would show to the court that prior to the receivership herein the said M. Zier & Company were working about 100 to 125 men; that this receiver is now working about 40 men; that the smallest number of men with which the plant can be operated at all is 25 men; that the pay roll for the week ending with January 10, 1903, was $615.00, the rent $25.00, the fuel account about $25.00, the light bill about $2.00 and water about $2.00 or for those items, a total of about $669.00; that if the operation of said plant is to continue, petitioner should be instructed to fill the contracts now on hand mentioned above in paragraph 2, and be instructed to seek other profitable and advantageous work, and to buy such material from time to time as may be necessary for it to buy. It says that it should be authorized to issue receiver's certificates for the purpose of borrowing money and paying for material, operation and other expenses, etc. when necessary. It says that the men employed by it are employed by the day only, and that it is now employing and will employ only such number as is necessary.

IV.

This petitioner would show to the court that it is in doubt as to a recommendation concerning the indefinite

operation of the said plant; that while there is possibly a good profit to be made thereby for the benefit of the estate herein, the operation thereof is fraught with danger of loss, and so it is that this petitioner recommends that a day and place be fixed for the hearing of this report and petition and that the defendant, M. Zier & Company, and its officers and the creditors of this estate be notified thereof by this receiver, by mail, and by publication, to be then and there present to be heard with respect to their recommendations or objections thereto, and that they determine what shall be done with respect thereto.

A list of the creditors as shown by the books of said M. Zier & Company is attached hereto as a part hereof marked "List of Creditors."

And finally petitioner would show that divers and various complications are threatened and will probably arise, over various claims against this estate, and against this estate, and petitioner says that same will result in great expense and vexatious delay and annoyance to this estate in the settlement thereof unless same be prosecuted in this suit, and that all creditors and other persons should be notified to prove their claims against this estate, with this receiver or in this cause and be enjoined from prosecuting any claim against this estate except by intervening petition in this cause.

WHEREFORE: The premises considered, your petitioner prays that his action herein, so far as reported, be approved and ratified; that it have the Court's instructions with respect to continuance of the operation of said plant; that a time be fixed for the hearing of this report and petition, and that the defendant, M. Zier & Company, and its officers, and the creditors of said M. Zier & Company, be notified, by mail and by publication, of the time and place of the hearing of this report and petition, at which time said creditors shall appear

and make known their recommendations or objections to the continuance of the operation of the plant herein; that all creditors be required to prove their claims against this estate by filing proof therefor with this Receiver, or by intervening petition in this cause, and that all creditors and persons be enjoined and restrained from prosecuting suits involving this estate in any manner except by intervention in this action; and it prays for all such further and other relief as the circumstances of the case may require, and as to equity belongs.

NEW ALBANY TRUST COMPANY,
By Fred Sauer, *Sec'y.*
Receiver.

STATE OF INDIANA,
County of Floyd.

Fred Sauer says he is Secretary of the New Albany Trust Company, and has the active charge of the Receivership of M. Zier & Company, and that the facts stated in the foregoing report and petition are true.

FRED SAUER.

Subscribed and sworn to by Fred Sauer before me this 16th day of January, 1903.

CHARLES B. SCOTT,
Clerk.

By William F. Ruoff,
Deputy.

AND upon the filing of the foregoing Petition and Report, at the said January Term, 1903, of the Floyd Circuit Court on the 16th day of January, 1903, before the Hon. William

C. Utz, Sole Judge among other the following proceedings were had to-wit:—

Joseph T. Ryerson & Son,
vs.
M. Zier & Company. } No. 5575.

This day came the New Albany Trust Company, Receiver of M. Zier & Company and filed an inventory and appraisement and its report and petition herein and said report and petition having been heard, it is now ordered that the same be set for the 24th day of January, 1903, at the hour of 9 o'clock a. m. at the Court Room of this Court to be further heard on the advisability of continuing the operation of the plant of M. Zier & Company and all kindred questions and the Receiver in this cause is now hereby ordered and directed to mail to the defendant M. Zier & Company and its President and Secretary and to all the persons and corporations shown in said report as creditors of said M. Zier & Company, printed notices of the fact that said petition is set for hearing on said date, place and hour, at which time all persons interested in this cause will be heard on the matters embraced in said report and petition.

It is further ordered that the receivership herein be continued and the operation of the plant herein be continued as heretofore ordered until the further order of Court, and said Receiver is ordered and directed to complete the contracts with Grainger & Company and J. B. Speed & Company under the terms and conditions proposed by said Receiver in said report and petition, no action is taken by the Court on the contracts with J. E. & F. Walters and Houston, Stanwood & Gamble Co. as set forth in said report and petition.

And this cause is reversed in all matters for such further order therein as may be deemed necessary."

AND afterwards at the said January Term, 1903 of the said Floyd Circuit Court, on the 24th day of January, 1903 the Hon. William C. Utz, Presiding, the following Report and proofs of notice was filed in open Court, to-wit:—

FLOYD CIRCUIT COURT.

"Joseph T. Ryerson & Son,
vs.
M. Zier & Company.

Comes the New Albany Trust Company Receiver herein and files its report of receipts and disbursements made since its last report herein to-wit:

1903 RECEIPTS.

Jan'y 15th.	Balance		$1,843.82
" 20th.	Todd Obenchain Co.		30.90
			$1,874.72

DISBURSEMENTS.

Jan'y 16th,	C. I. & L. Ry. Co	$ 17.75	
" "	Hoffman Ahlers & Co	34.62	
" "	Rodenbush & Payne	8.64	
" "	Globe Rolling Mill Co	231.21	
" 17th,	Scully Steel & Iron Co	243.20	
" "	United Gas & Electric Co.	27.00	
" "	Roudenbush & Payne	9.38	
" "	L. Hammersmith	32.73	
" "	J. G. Eury, Bookkeeper	526.84	
" "	" " "	17.05	
" 18th,	W. M. Mix.	15.00	
" "	S. J. Gardner	15.00	
" 20th,	B. O. & S. W. Ry. Co.	32.61	$1,211.03
			$633.69

It also files herewith as a part hereof a copy of a notice which this Receiver in pursuance of the order of Court mailed to M. Zier & Co. and to all the creditors of M. Zier & Co. the same being deposited in the United States Mail on Saturday, January 17th, 1903.

THE NEW ALBANY TRUST COMPANY,
By Fred Sauer, *Secretary.*
Receiver of M. Zier & Co.

Subscribed and sworn to by Fred Sauer this 24th day of January, 1903.

CHARLES B. SCOTT,
Clerk F. C. C

EXHIBIT.

"THE NEW ALBANY TRUST COMPANY,

New Albany, Ind., January 16, 1903.

. . . . . .

Dear Sirs:

You are hereby notified that we on this day filed in the Floyd Circuit Court our report and petition concerning the assets of M. Zier & Co. and indefinite operation of the plant. The report shows the assets are of the value of $28,434.81 and unfinished contracts of the value of about $8,000.00 and contracts on which no work has been done amounting to $11,914.15. On a hearing of the petition the Court fixed the 24th day of January, 1903, at the hour of 9 o'clock a. m. at the Court Room at New Albany, Indiana, for a further hearing of the report and petition on the question of further operation of the plant and all kindred questions at which call all creditors and all persons interested in this cause may be present and be heard.

You are therefore notified to be present in person or by attorney and then be heard.

Respectfully,
THE NEW ALBANY TRUST COMPANY,
Receiver M. Zier & Co.
By Fred Sauer, *Sec'y.*"

AND upon the filing of the foregoing report, etc., at the said January Term, 1903 of the Floyd Circuit Court on the 24th day of January, 1903, before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co.
} No. 5575.

This cause coming on to be heard on the reports and petitions of the Receiver herein, and the several matters involved therein, and it appearing to the Court that all the creditors as shown by the books of the defendant M. Zier & Company had been notified by said Receiver to be present on this day to be heard on said matters and the following creditors being present in person or by attorney to-wit:

By Jewett & Jewett, Attorneys:
Louisville Fire Brick Works.
L. Hammersmith.
F. R. Baker.
New Albany Manufacturing Co.
I. F. Force Handle Co.
Cincinnati Iron Store Co.
Queen City Supply Co.
Gertrude Strobel.
Minnie M. Zier.

Herter & Hester, Attorneys:
Jones & Laughlin Steel Co.
Crucible Steel Co. of America.
Reading Iron Co.
John Schleay, Jr., Co.
Inland Steel Co.
Burtt & Taggart, Attorneys:
E. A. Kinsey Co.
By Stotsenburg & Weathers, Attorneys:
Globe Rolling Mills Co.
New Albany National Bank.
Pittsburg & Supply Co.
Roudenbush & Payne.
By McIntyre, Bulleit & James, Attorneys:
C. U. Williams, agent Pennsylvania Railroad Co.
By C. D. Kelso, Attorney:
United States Tube Co.
Indiana Water Co.
By W. W. & J. R. Watts, Attorneys:
National Foundry and Machine Co.
Chicago Pneumatic Tool Co.
W. B. Belknap & Co.
Ahrens and Ott Mfg. Co.
Jos. T. Ryerson & Son.
A. M. Castle & Co.
Ohio Falls Varnish Co.
Portsmouth Steel Co.
John Finger and Son.
Lewis and Creed.
Louis Bir.

And the following creditors being before the Court by letters filed in this cause to-wit:

The Cincinnati Railway Supply Co.

The Dowerman Rivet and Bolt Mfg. Co.

Edward Kelly Foundry Co.

The Cleveland Steel Company.

And said creditors having entered their appearance and having been heard with respect to the matters herein, it is now ordered and without objection thereto, that the Receiver herein shall pay in full the rent due on the premises on plant of said M. Zier & Co. to the Chicago, Indianapolis & Louisville Railway Co. the lessor of said premises.

The Receiver herein having reported that John E. & Frank Walters have agreed to pay into Court and into the hands of the Clerk of this Court the sum of $900.00 in full of the completion of the contract herein between said Walters and M. Zier & Co. said sum to be retained by said Clerk until such completion and the further order of Court the Receiver herein to deliver by January 28, 1903 the boilers and material to be furnished under said contract and to complete the work under said contract and according to the specifications thereof, within ten days from the date of completion of the brick work, which said Walters are to do to make said work ready for completion by said Receiver, said Walters agreeing that they will not delay the erection of the said brick work to be done for the erection of said boilers. Upon the entry of an order of Court directing said receiver to carry out such agreement, said Walters are to pay said money into Court as aforesaid and shall dismiss certain attachment proceedings they have instituted in Kentucky and cancel and surrender any claim they may have for damages on account of said contract, which may have accrued to this time. It is now ordered and without objection thereto that said agreement be and the same is hereby approved and said receiver is now ordered and directed to carry out the same upon the terms thereof.

It is further ordered by the Court after hearing said creditors in person and by attorney, and it appearing to be the unanimous wish of those present that the Receiver herein shall continue the operation of the plant herein until the further order of the Court and shall proceed to the completion of the unfinished contracts now on hand and the contracts amounting to $11,914.15 as set forth in the receiver's report and petition herein upon which no work or material has been done or furnished and shall accept and do such repair work or small jobs as it may be offered and as it may do, but not to make any new contract or take any other work, which will prolong the operation of said plant beyond the time of two months from this date except upon the further order of this Court. Said receiver is authorized to buy material borrow money or contract other indebtedness necessary for such operation to the extent of but not to exceed the sum of $5,000.00 and is authorized to issue certificates of any such indebtedness and said certificates shall bear interest at the rate of six per cent. per annum from their date until paid and they shall be and remain a first and superior lien upon all the assets in this estate to secure their payment and said receiver shall pay off said certificates from time to time when the funds in hand justify the same. Said receiver shall operate said business on as small expense as may be done and shall retain in the office of said plant one clerk only, at an expense of $4.00 per week unless otherwise ordered by the Court.

It is further ordered that all persons or corporations shown on the books of said M. Zier & Co. as creditors and all others who may be known to said receiver as creditors thereof, shall be notified immediately by said Receiver by mail to file their claims against this estate properly proved according to law, same to be filed with said receiver on or

before the 11th day of May, 1903, and said receiver shall further notify all creditors by publication by three insertions in one or more daily papers published in the City of New Albany, Indiana, to prove and file such claims within said time. And it is now ordered that all creditors and other persons be and they are hereby enjoined and restrained from prosecuting any claim or suit against this estate except by intervention in this cause or by first obtaining leave of this Court.

And this cause is now reserved on all matters for the entry of such orders as may appear to be necessary."

AND afterwards, at said January Term, 1903, of said Floyd Circuit Court on the 14th day of February, 1903, the Hon. William C. Utz, Presiding, the following petition and report was filed in open Court, to-wit:

"FLOYD CIRCUIT COURT.

Joseph T. Ryerson & Son,
Complainant.
vs.
M. Zier & Co.,
Defendant.

PETITION OF NEW ALBANY TRUST CO. CONCERNING PROCEEDINGS IN BANKRUPTCY.

Respectfully represents the New Albany Trust Company, receiver of M. Zier & Co. under order of appointment herein that since its last report herein the following is the status concerning the matters pertaining to this estate, to-wit:

That pursuant to the order of Court herein entered on the 24th day of January, 1903, it has entered upon the ful-

fillment of the contract or agreement between this receiver and John E. and Frank Walters therein set forth, as also with the uncompleted and the new contracts therein ordered and directed to be completed and fulfilled; that while some of the same have been completed, others there are, and particularly said Walters contract, which are in a state of incompletion and upon which this Receiver is now working; that it has in all respects obeyed and is carrying out the provisions of said order. Said order is now referred to as a part hereof in all respects as fully as if copied herein in haec verba.

Petitioner would show to the Court that said order so made part hereof was entered by this Court only after the most careful consideration by this Court, your petitioner and the creditors of said M. Zier & Co. that this petitioner being in some doubt as to what should do or recommend with respect to said estate did on the 16th day of January, 1903 file in this Court, in open Court its report and petition showing among other things the appraisement details and character of the assets of said M. Zier & Co. coming to its hands, and that therein it recommended among other things, that said report and petition be set for a particular day for hearing thereon; that in the meantime said M. Zier & Co. and its officers, and all the creditors of said M. Zier & Co. as shown by the list of creditors then filed, and which list included the Inland Steel Co., John C. Thruston and Dey Time Register Co., be given notice thereof by the United States Mail, so that any and all creditors or persons interested therein should be present and be heard, and make known their recommendations or objections with respect thereto. Said petition and said list are now referred to as part hereof as fully as if copied herein; that on said 24th day of January this petitioner filed its report herein among

other things showing the facts with respect to such notice, filing a copy thereof, and that it had sent such notice by mail deposited in the United States Mails on the 17th day of January, 1903, and such notice was mailed by this Receiver on said day to all the creditors so shown in said list, including said Inland Steel Co., John C. Thurston and Dey Time Register Co. aforesaid.

On the said 24th day of January, 1903 said cause was called by this Court on said report and petition, and there then appeared divers of said creditors in person or by attorney, at said hearing; that said report and said petition was then before said creditors in open Court discussed, under and by which discussion settlement and disposition was made of the divers matters under discussion and set forth in said report and petition and kindred matters therein and there and then appeared the Inland Steel Company and Jacon Herter and George H. Hester as its attorneys, and said Inland Steel Company and said Herter and Hester as such attorneys, entered their appearance as is disclosed by said order dated January 24, 1903 herein, and said attorneys and, especially said Hester as such attorney participated in said proceedings, that said Hester was also attorney for said Walters with respect to the contract between said Walters and said Zier & Co. and this Receiver, and was so present insisting upon its fulfillment and agreeing to its carrying out as provided in said order; that at said hearing, said order of said January 24, 1903 was entered without objection from said Inland Steel Company, John C. Thruston and Dey Time Register Co., or any creditor present in person or by attorney or any creditor notified as aforesaid, or any creditor or person; that at no time has there been objection by any one to the Receivership herein, nor motion of any nature to set aside this Receiver's appointment.

Your petitioner would now show to the Court that among other things said order provided that all creditors and other persons be and they were then and thereby enjoined and restrained from prosecuting any claim or suit against the estate herein except by intervention in this cause, or by first obtaining leave of this Court and thereupon said cause was retained as to all matters for the entry of such orders as may appear to be necessary, and said order appointing this Receiver has never revoked or set aside and same is now in full, force and effect.

The petitioner would now show to the Court that without respect to what has been done herein as herein set forth said Inland Steel Co., John C. Thruston and Dey Time Register Co., have since the entry of said order on January 24th, 1903 as petitioner is informed, believes and alleges, filed a petition in involuntary bankruptcy against said M. Zier & Co. as alleged by them on grounds of bankruptcy as provided by the Act of Congress entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States" approved July 1, 1898; that said petition was filed in the District Court of the United States for the District of Indiana, at New Albany, Indiana on the 6th day of February, 1903, that thereafter, to-wit: On February 11, 1903 a supplemental petition was filed, based on said Act of Congress, as amended; that on said February 11, 1903, said petitioner, Inland Steel filed in said Court a petition verified by said Hester in which they set forth the receivership herein, and without showing to that Court all the facts herein, set forth, to-wit: Their notification as to the hearing of said report and petition, the participation of said Inland Steel Company and said Herter and Hester as attorneys in this proceeding, their appearance herein, the consideration of said receivership by said credit-

ors, and the restraining order and injunction herein an order was then obtained therein whereby one Frederick D. Conner was by that Court appointed receiver and directed to take charge of the estate of M. Zier & Co. in bankruptcy and therein this receiver was ordered to deliver up to said Frederick D. Conner as such receiver, the said property and effects of said M. Zier & Co. now in its possession and to refrain from interfering in any way with said Conner's possession as receiver.

Petitioner is further informed, believes and alleges that said Hester as such attorney and said petitioning creditors, said Frederick D. Conner and Henry U. Pettit, the Marshal of said District Court of the United States for the District of Indiana, are now seeking and will seek to disturb this Court's Receiver in its possession and without the order of this Court, and irrespective of the matters herein set forth and endeavoring and will endeavor to take possession thereof and from this receiver.

Petitioner would show that the creditors whose appearance are noted before this Court in the entry of the order herein on January 24, 1903, have claims aggregating about $53,279.51 against the estate herein; that certain creditors whose claims aggregate $11,622.49 have filed their claims with this receiver, thus making a total of $64,902. in amount so filed or appearing; that the total liability of the estate of $76,463.36; that the total number of creditors is 76; that 37 appeared to this action, as appeared by said order and 25 including said Dey Time Register Co. have filed their claims with this receiver for the purpose of participating in this estate making a total of 62 creditors so appearing or filing their claims with this receiver.

Petitioner says that with a view to the observance of that comity existing between the State and the Federal

Courts as defined by the Supreme Court of the United States and the several Federal and State Courts, and with a view to avoiding the clash of jurisdiction herein necessarily to be brought about on the enforcement of said Court's order, this petitioner caused its attorneys to hold conversation over the long distance telephone between New Albany and Indianapolis, Indiana, with the Honorable A. B. Anderson, Judge of said District Court of the United States for the District of Indiana on this 13th day of February 1903, and therein caused said counsel to urge that because thereof said order appointing such receiver should not be enforced until after said matters sould be presented to this Court with the request that this Court direct it and its said attorneys to lay said matters before said, the Honorable A. B. Anderson, Judge of said Court, as this Court might direct, whereupon said Judge requested petitioner's counsel to notify said Hester as such attorney, that said matter might be heard on Monday February 16, 1903 at Indianapolis, Indiana, and that in the meantime the said order appointing said Connor such receiver was not to be enforced; that thereupon petitioners counsel so notified said Hester as such counsel by service of a written notice thereof, a copy of which is filed herewith as part hereof marked "Notice."

Petitioner would further show to the Court that this Court is about to adjourn over to its next term and that the first day thereof will be the 9th day of March 1903; that the order herein above referred to entered on January 24, 1903, directed this receiver to go on with and complete various contracts at that time submitted and discussed; that it has entered upon said work; that the operation of this plant was for the beneficial purpose of this estate; that while it involves much outlay to continue its operation, it has reduced all expenses to the minimum; that the cessation of said

plant means much loss to the creditors of this estate in that it will dispel the organized force of skilled workmen now employed by petitioner; that it will involve this estate in many complicated questions of loss or damage with respect to the fulfillment of the contract which it has so undertaken to fulfill. That it would work great hardship on this receiver and upon this estate to leave it with this Court adjourned and without order and instructions as to what to do; that this Court should so instruct it and order it as to the matter herein and especially for the time between the time of its adjournment and its convention again that this receiver is advised, it is an officer of this Court only, and that it must be ordered and directed by this Court only with respect to the property in its hands.

And so it is that this petitioner would now show that it is advised, believes and alleges:

1. That the injunction and restraining order of this Court herein has been knowingly violated by said Inland Steel Co. and said Dey Time Register Co., and Herter and Hester, attorneys for said Inland Steel Company.

2. That said Inland Steel Company and said Dey Time Register Company and all other creditors are estopped from prosecuting said petition in bankruptcy, and especially said petition seeking to take from this receiver the assets in its hands.

3. That all creditors and others are enjoined and restrained from prosecuting any attempt to take from this receiver any of the assets in its hands as receiver except by leave of this Court on intervention herein.

4. That the record in said District Court of the United States for the District of Indiana does not disclose all the facts of the matters herein; that said Court was not informed as to the injunction restraining order and estoppels by

entries of appearance, participation and otherwise herein occurring and in this petition set forth.

5. That the assets of M. Zier & Co. in the possession of this receiver are in custodia legis; that the parties have submitted to this form; that this Court came into lawful custody thereof, and said several orders and proceedings were entered and had before the institution of said bankruptcy proceedings and attempt to oust this Court and this Receiver therefrom; that because of the respect between the Courts, both State and Federal, for the orders and decisions of each other in said matters and because of the spirit of comity existing between said Courts as fixed and defined by the Supreme Court of the United States, the several Federal and State Courts, had said District Court been advised of the matters herein set forth, said Court would not have entered said order as set forth, or would have so modified said order as to direct said Connor to come to this Court by intervening petition and plead his causes here.

6. That this petitioner believes and therefore; alleges and charges that said District Court under the peculiar circumstances of this case will co-incide with this Court, if it shall deem it wise to enter orders herein specificaly enjoining and restraining the said Inland Steel Company, John C. Thruston, Dey Time Register Company and Herter and Hester, attorneys, said Frederick D. Connor, individually and as Receiver and Henry U. Pettit the Marshal of the District Court of the United States for the District of Indiana, from further prosecuting any matters in relation to this estate with respect to the matters herein alleged or the taking of said assets in any manner except by intervention in this action.

The premises considered this petitioner recommends and prays that it be instructed, directed and ordered what

it shall do with respect to the estate in its hands now pending the controversy and adjournment of Court herein; that it shall present the facts in this matter to the said District Court of the United States for the District of Indiana, either by limited or general appearance in said suit instituted by said Inland Steel Company, et al. in bankruptcy; and ask such relief, if any, as this Court may direct; that said Inland Steel Company, John C. Thruston and Dey Time Register Company, said Frederick D. Connor, Receiver and individually and said Henry U. Pettit, Marshal of the District Court of the United States for the District of Indiana be enjoined and restrained from in any suit, summary process or otherwise, or in any manner attempting to or ousting or taking from this Receiver the possession of said estate except by intervention herein and proper orders entered in this cause; that this receiver be directed to continue the operation of said plant as heretofore ordered and to report to this Court any molestation of whatever nature it shall suffer in such operation in violation of such orders.

It prays for such other and further relief as the circumstances of the case may require and as to equity belongs.

W. W. & J. R. WATTS,
Attorneys for Petitioner

Fred Sauer, says he is the Secretary of the New Albany Trust Company, receiver petitioner in the foregoing petition, having in charge the active management of the Trust herein mentioned, and that the statements in the foregoing petition are true.

FRED SAUER.

Subscribed and sworn to by Fred Sauer before me this 14th day of February 1903.

CHARLES B. SCOTT,
Clerk F. C. C."

AND upon the filing of the foregoing petition at the said January Term 1903 of the Floyd Circuit Court, on the 14th day of February 1903, before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co.
} No. 5575.

Comes the New Albany Trust Company, receiver herein and files its petition herein showing to the Court divers matters concerning the filing of a petition in the District Court of the United States for the District of Indiana; by the Inland Steel Company, John C. Thruston and Dey Time Register Company, as creditors of said M. Zier & Co., in involuntary bankruptcy and a petition seeking the appointment of a receiver therein to take charge of the assets in this Court's possession through its receiver herein, whereupon such an order was entered, Frederick D. Connor being named as receiver and being directed to take possession of such assets, and further showing to the Court that the record in said case disclosed the fact that said Court was not fully advised as to the various orders, injunctions, restraining orders, and estoppels by entries of appearance and participation in these proceedings by divers creditors of this estate, including said Inland Steel Company and Dey Time Register Company, petitioning creditors therein, and further showing that because of the immediate adjournment of this Court and its convention not being again had until March 9th 1903, and the operation of the plant herein made by and with the advice of much more than a majority in number and amount of the creditors herein, including said Inland Steel Company, such petitioning creditor in bankruptcy

and this Court now after havig read said petition and having considered the various exhibits referred to in such receiver's petition and the entire record of this cause and being fully advised is of the opinion that had said District Court of the United States for the District of Indiana been fully advised of the divers matters herein occurring it would not have entered such order as has been therein entered; that because of the comity existing between the Courts of this Country, State and Federal, its order would at most have directed any attempt to take the assets herein to be by intervention in this cause and that only, and being of the opinion that said District Court will coincide with these views and a state of necessity for the entry of this order existing, It is now ordered that the Receiver herein conduct the operation of the plant herein as heretofore ordered and directed; that said Inland Steel Company, John C. Thruston and Dey Time Register Company, Frederick D. Connor individually and as receiver and Henry C. Pettit individually and as Marshal of the District Court of the United States for the District of Indiana and all others in any capacity be and are hereby enjoined from in any wise molesting, interfering with or attempting by legal process or otherwise to take possession of the estate of M. Zier & Co. in the hands of this Court through its receiver herein, and in the hands of said receiver until the further order of this Court, and except by intervention in this cause.

And said Receiver is now hereby ordered and directed through its attorney, to proceed to Indianapolis, Indiana, and there by a limited appearance and by protestation against appearance, only, by petition upon such appearance only, lay before said District Court of the United States for the District of Indiana the facts with regard to the matters herein, said injunction, restraining order, and said estoppels and to

suggest to said Court the orders of this Court and the fact that had it been fully informed, as is believed by this Court, its order with respect to the assets herein would at the most have been a direction to make an application to this Court at the proper time and in the proper way for delivery of the said assets to such District Court's receiver or trustee after proper disposition and settlement of the matters herein.

The Court being further advised and on motion of said New Albany Trust Company, receiver, It is ordered that the Inland Steel Company, John C. Thruston and The Dey Time Register Company, be and they are hereby ordered to appear and show cause why they have prosecuted said petition in involuntary bankruptcy why they have filed said petition seeking the appointment of a receiver for the assets of this estate, why they have sought to take from this Court the assets of this estate, why they should not be punished for contempt for disobeying the orders of this Court without first obtaining leave of the Court by petition of intervention or order in this cause. And they are hereby commanded to show such cause on or at the time of the first day of the next term of this Court. And service of a copy of this order upon Jacob Herter and George H. Hester because of their apparent representation of said petitioning creditors and then said co-counsel for the purpose of this show cause order shall be deemed sufficient for the service thereof on all said persons and parties.

And It is further ordered that this Court shall retain such control of said matters as may be necessary for the purpose of the entry of any and all such orders as may be deemed proper and necessary herein and therein. And Jacob Herter and George H. Hester such attorneys now being present in Court and Hester having been heard in opposition to the said petition and having notice of the

entry of this order It is now ordered that no other or further notice hereof need be given the said Inland Steel Company, John C. Thruston and Dey Time Register Co., petitioners in said bankruptcy proceedings. And comes now C. D. Kelso and asks leave of the Court to withdraw as the attorney of record for the following named parties; United Gas and Electric Company, United States Tube Company, Indiana Water Company and Simon David and the Court now permits the said C. D. Kelso to withdraw herefrom."

And afterwards at the said January Term, 1903 of said Floyd Circuit Court on the said 14th day of February 1903 before the Hon. William C. Utz, Sole Judge among other the following proceeding were had to-wit:

"Joseph T. Ryerson & Son,
vs.
M. Zier & Co. } No. 5575.

Comes now Frederick D. Connor as receiver by George H. Hester his attorney, and by leave and order of the Court and upon his own motion, makes himself a party to this proceeding, and thereupon by leave of the Court files his verified petition showing his appointment as receiver of said M. Zier & Co. by order of the United States District Court for the District of Indiana and praying this Court for an order requiring the said New Albany Trust Company, as receiver of said M. Zier & Co. to turn over and surrender to him said Frederick A. Connor, as receiver in bankruptcy, the property of said M. Zier & Co. of which the said New Albany Trust Company as receiver of said M. Zier & Co. under the orders of this Court is custodian and the matter of said petition is now continued until the next term of this Court.

And afterwards at Chambers, In Vacation, of the Floyd Circuit Court on the 16th day of February, 1903, before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:

Joseph T. Ryerson & Son,
vs. } No. 5575.
M. Zier & Co.

Comes now W. W. Watts, attorney for the New Albany Trust Company as receiver of M. Zier & Co. and files before the Judge of the Floyd Circuit Court a written statement which reads in words and figures as follows, to-wit:

"FLOYD CIRCUIT COURT.

State of Indiana, } ss.
Floyd County. }

Joseph T. Ryerson & Son,
Complainant.
vs.
M. Zier & Co.,
Defendant.

Statement and Motion by New Albany Trust Co., Receiver, and W. W. Watts, its Attorney.

To the Honorable Judge of the Floyd Circuit Court in Chambers:

Respectfully represents the New Albany Trust Co., receiver herein, and W. W. Watts, one of its attorneys herein, that pursuant to the order of the Court herein entered on Saturday, February 14, 1903, they on the 16th day of February, 1903, at Indianapolis, Ind. filed before the District Court of the United States for the District of Indiana, A. B. Anderson, Judge presiding, a statement of the New Albany Trust Co., receiver under the order of this Court setting forth the facts by protestiation and limited appearance only and showing to said Court the reasons for a modi-

fication of its order theretofore entered appointing a receiver granting an injunction and restraining order and directing its receiver to take possession of the assets of M. Zier & Co.

This receiver and said attorney say they have made diligent effort to carry out the orders of this Court with respect to those matters, but the order of said Court remains as it was and they now move the Court to strike and expunge from the files herein the petition of this receiver filed herein on the 14th day of February, 1903 and the order entered thereon.

NEW ALBANY TRUST CO.,
Receiver.
By W. W. Watts, *Attorney.*"

And the Judge after considering said statement refuses to concur therein, but orders that the matters and facts therein stated show that said W. W. Watts has been guilty of a contempt of Court and it is now ordered that rule be issued against the said W. W. Watts, to appear before the said Judge on the 21st day of February, 1903 at 3 o'clock p. m. and show cause, if any he has, why he should not be punished for contempt.

Dated Feby. 19th, 1903. WILLIAM C. UTZ,
Judge."

AND afterwards, at Chambers, in Vacation of the Floyd Circuit Court on the 19th day of February, before the Hon. William C. Utz, Sole Judge, among other the following proceedings were had, to-wit:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co. } No. 5575.

Comes now the New Albany Trust Company as receiver of M. Zier & Co. and tenders to the Judge of the Floyd Cir-

cuit Court, its written resignation as such receiver, which written resignation reads in words and figures as follows, viz:

"STATE OF INDIANA,)
County of Floyd.) ss.

Joseph T. Ryerson & Son,)
vs.)
M. Zier and Company)

To the Honorable, Judge of the Floyd Circuit Court, In Chambers:

The New Albany Trust Company, receiver in the above entitled cause respectfully shows to the Court that in pursuance of the order heretofore made by this Court it appeared by limited appearance and protestation only as ordered by this Court before Judge A. B. Anderson, of Indianapolis, Judge of the United States District Court for the District of Indiana, on Monday the 16th day of February, 1903, and that upon the hearing in that Court this Receiver stated to the Honorable Judge of said United States District Court that it was ready and willing to turn over to the receiver appointed by the Honorable Federal Court in bankruptcy proceedings, of M. Zier and Company, then pending in said Court the property and assets of said M. Zier and Company in the hands of this receiver, and this Receiver further states that it has not yet been able to make up its accounts as receiver as to the receipts and disbursements, but that it is now preparing the same to be submitted to this Court; but that it is ready to turn over to Frederick D. Connor, the receiver appointed by the United States District Court in baakruptcy all of the property of the said M. Zier & Company; and this receiver now prays for an order of this Court authorizing it to turn over to said Frederick D. Connor,

the property of said M. Zier and Company, now in its hands together with any balance in cash which may remain after such statement of its accounts shall be made up and presented and that upon delivering said property to said Frederick D. Connor, receiver aforesaid, it be discharged from all further liability for or on account of said property or assets of said M. Zier and Company so turned over to such Connor as such receiver.

This receiver further asks that upon making up and presentation of its accounts for allowance to this Court, that it be allowed to resign as Receiver of the said M. Zier & Company, and that upon the approval of its accounts its said resignation be accepted by this Company, and that it be fully and finally discharged as such receiver. All of which is respectfully submitted.

THE NEW ALBANY TRUST COMPANY,
By Henry E. Jewett,
Vice-President.

Henry E. Jewett being sworn on his oath, says: He is the Vice-President of the New Albany Trust Company and makes this affidavit on behalf of said Company; that the statements contained in the foregoing petition are true in substance and fact as he verily believes.

HENRY E. JEWETT.

Subscribed and sworn to before me this 19th day of February 1903. CHARLES B. SCOTT, *Clerk*,
By William F. Ruoff, *Deputy*."

And the Judge after reading said tender of resignation holds that the matters therein set forth show that said Receiver is in contempt of Court, and the Judge orders that a rule issue at once against said Receiver to appear before the undersigned Judge on the 21st day of February 1903 at

3 o'clock p. m. and show cause, if any it has or can, why it should not be punished for contempt of Court.

WILLIAM C. UTZ,

Dated Feby. 19, 1903. *Judge.*"

AND afterwards in Vacation, at Chambers of the Floyd Circuit Court on the 20th day of February 1903, before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:

IN VACATION.

"Joseph T. Ryerson & Son,
vs. } No. 5575
M. Zier & Co.

Comes now the plaintiff by W. W. Watts, its attorney, and comes also the New Albany Trust Company, as Receiver in the above entitled cause; comes also the United States Tube Company, by D. A. Saches, its attorney, and files before the Judge of this Court its verified statement, which reads in words and figures as follows to-wit:

"STATE OF INDIANA }
County of Floyd. } *ss.*

Before Honorable William C. Utz, Judge thereof in Vacation:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co.

IN THE MATTER OF THE RECEIVERSHIP OF SAID DEFENDANT M. ZIER & CO., NEW ALBANY TRUST COMPANY, RECEIVER.

Comes now the United States Tube Company by D. A. Sachs, its attorney, and respectfully represents to the Court,

that on the 19th day of February 1903, the said New Albany Trust Company as such Receiver of said M. Zier & Co. did wrongfully, unlawfully and without leave of this Court turn over and surrender the possession of the M. Zier & Co.'s boiler plant located at the Northeast corner of Upper First or Pearl and Oak streets in the city of New Albany, Indiana to one Frederick D. Connor, who is acting as receiver in bankruptcy claiming to have been appointed by the District Court of Indiana, sitting in bankruptcy, and that said New Albany Trust Company, as such receiver of said M. Zier & Co. is now threatening to and will, unless restrained by order of this Court turn over to said Frederick D. Connor as such receiver in bankruptcy, all the other assets of said M. Zier & Co. remaining in its hands as such Receiver.

Wherefore your petitioner prays that the said New Albany Trust Company, as such receiver, be cited to appear before your Honor in Chambers, at 3 o'clock p. m. of this the 20th day of February 1903 and show cause, if it any have or can, why it should not be punished for contempt of Court, and the undersigned further prays that if this Court finds that said receiver has violated the orders of this Court as above represented, that it be removed from its office as such receiver, and a successor immediately appointed, and that said receiver be required to file its account immediately and to turn over to its successor all of the property it now has in its hands as such receiver belonging to said M. Zier & Co. and your petitioner further prays for such other orders as the Court may deem right and proper in the premises.

Respectfully submitted,

UNITED STATES TUBE COMPANY,

By D. A. Sachs,

Its Attorney.

D. A. Sachs, being first duly sworn upon his oath, says that the matters and facts as set forth in the above and foregoing petition are true as he verily believes so help him God.

D. A. SACHS.

Subscribed and Sworn to before me this 20th day of February 1903.

BERTHA L. SCOTT,

[SEAL.] *Notary Public.*

My commission expires January 12th, 1905."

And the application of said receiver to be permitted to resign as such is now disallowed by the Judge of this Court for the reason that said receiver in its said written tender of resignation openly and wilfully shows to the Court that it has violated the trust reposed in it by the Judge of this Court, and has wrongfully, unlawfully and without leave or permission of the Judge of this Court or said Court, surrendered the possession of the property of which it is custodian to Frederick D. Connor, and now the Judge of this Court, upon his own motion and because of the open contempt of said receiver for the orders, judgment and process of this Court does now order and direct, that said receiver be and it is hereby removed from its trust. And it is now ordered to immediately account to the Court for all of the assets of said M. Zier & Co. which came into its hands as such receiver, and now the Judge of said Floyd Circuit Court, upon his own motion appoints Charles D. Kelso as receiver of said M. Zier & Co. as successor to New Albany Trust Company; And the Judge of this Court now orders and directs that said Charles D. Kelso immediately qualify as such receiver and that he give bond in the sum of Thirty Thousand Dollars ($30,000.00) to the approval of the Judge of

the Floyd Circuit Court and that said receiver is now ordered by the Judge of this Court to immediately upon his qualification, demand of said New Albany Trust Company and of said Frederick D. Connor the immediate possession of the property of said M. Zier & Co. which came into the hands of said New Albany Trust Company as the receiver herein and if the said New Albany Trust Company or said Frederick D. Connor shall fail and refuse to immediately turn over and surrender the possession of said assets to said receiver, the Judge of this Court now orders and directs that said receiver immediatelly report such refusal and failure to surrender such assets to this Honorable Judge for further action in the premises.

And now comes Charles D. Kelso and files with the Clerk of this Court his bond in the sum of Thirty Thousand (30,000.00) Dollars condlitioned according to law with the United States Fidelity and Guaranty Company of Baltimore, Maryland as surety thereon, which bond is now approved by the Judge of this Court and the said receiver thereupon takes his oath of office. And the Judge of this Court now orders and directs that said receiver proceed to execute the duties of his trust in the same manner and being invested with the same powers as the New Albany Trust Company was heretofore invested, the present receiver being authorized to carry out all the orders of the Court heretofore made in this cause.

WILLIAM C. UTZ,

Dated at New Albany, Ind. *Judge.*
February 20th, 1903.

AND afterwards at Chambers, in Vacation of the Floyd Circuit Court on the 20th day of February 1903 before the

Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co.

IN THE MATTER OF THE RECEIVERSHIP OF SAID DEFENDANT M. ZIER & CO., CHARLES D. KELSO, RECEIVER.

Comes now Charles D. Kelso, receiver of M. Zier & Co. and files before the Judge of the Floyd Circuit Court of Indiana in Chambers and in Vacation his verified report which reads in words and figures as follows to-wit:

Before the Honorable William C. Utz, Judge of Floyd Circuit Court:

"STATE OF INDIANA,
County of Floyd. } ss.

Joseph T. Ryerson & Son,
vs.
M. Zier & Co.

IN THE MATTER OF THE RECEIVERSHIP OF M. ZIER & CO., CHARLES D. KELSO, RECEIVER.

Comes now Charles D. Kelso, as receiver of M. Zier & Co. and respectfully shows to the Judge of this Court, that in obedience to the orders of this Honorable Judge he called upon the New Albany Trust Company and demanded of it the possession of all the assets of said M. Zier & Co., which came into its hands as receiver thereof, and that said Trust Company failed and refused to surrender the possession thereof for the reason that it had turned over the plant of

M. Zier & Co. located on Pearl and Oak Streets in the City of New Albany, Indiana, to Frederick D. Connor and that for the other assets of said Company it intended to account forthwith to the Honorable Judge of this Court. Thereupon the undersigned as receiver of said M. Zier & Co. called upon said Frederick D. Connor and demanded of him the possession of all the property of said M. Zier & Co. which had been wrongfully turned over to him by said New Albany Trust Company and that said Frederick D. Connor failed and refused to turn the same over to the undersigned.

Wherefore the undersigned prays for such other orders and decrees in the premises as the Judge In Vacation may deem just and proper.

Respectfully submitted,

CHARLES D. KELSO,

Receiver of M. Zier & Co.

Subscribed and sworn to before me this 20th day of February 1903.

CHARLES B. SCOTT, *Clerk, F. C. C.*

By William F. Ruoff, *Deputy.*"

And the Court having considered said report and being fully advised in the premises, finds that Frederick D. Connor has and is intermeddling with the assets of said estate and is interfering with the possession and control of said assets by the receiver of this court.

It is therefore considered, ordered and adjudged by the Judge of said Court, that a summary writ be issued in this cause directed to the Sheriff of this County, requiring the said Sheriff to immediately seize and to take into his possession and deliver over to Charles D. Kelso, receiver of M. Zier & Co. all the property of said M. Zier & Co., which said Frederick D. Connor now has in his possession, which con-

sists of the plant of M. Zier & Co. located at the corner of Pearl and Oak Streets in the City of New Albany, Indiana, including all tools and machinery, manufactured iron, scrap iron, appliances and other personal property therein situated, books, papers, accounts and choses in action, and that said Sheriff of said County execute said writ forthwith and upon the execution of said writ make his return to the Judge of the Honorable Floyd Circuit Court forthwith.

Dated at New Albany, Ind., February 20, 1903.

WILLIAM C. UTZ,
Judge."

STATE OF INDIANA, }
County of Floyd. } *ss.*

I, Charles B. Scott, Clerk of the Floyd Circuit Court within and for said County and State do hereby certify that the within and foregoing is a full, true and complete Copy of Entries of Record and Orders of Court together with the papers and pleadings set out and filed therein, in the receivership case of Joseph T. Ryerson and Son *versus* M. Zier & Company, as the same appears of record and on file in my office.

WITNESS my hand and the seal of said Court hereto affixed at New Albany, Indiana this 4th day of March, 1903.

CHARLES B. SCOTT,
Clerk Floyd Circuit Court.

[SEAL.]

STATE OF INDIANA, }
Floyd County. } *Set.*

I, William C. Utz, Judge of the Floyd Circuit Court, in and for said County and State, do hereby certify that

Charles B. Scott, is the Clerk, and Keeper of the Seal thereof, that his attestation to the foregoing certificate is in due form of Law and that his genuine signature is thereto affixed.

WITNESS MY HAND and the seal of said Court hereto affixed this 4th day of March, 1903.

WILLIAM C. UTZ,
[SEAL.] *Judge Floyd Circuit Court.*

STATE OF INDIANA, } *Sct.:*
Floyd County. }

I, Charles B. Scott, Clerk of the Floyd Circuit Court, in and for said County and State, do hereby certify that William C. Utz is the Judge of said Floyd Circuit Court, that his attestation to the foregoing Certificate is in due form of Law and that his genuine signature is thereto affixed.

WITNESS MY HAND and the seal of said Court hereto affixed this 4th day of March, 1903.

CHARLES B. SCOTT,
[SEAL.] *Clerk Floyd Circuit Court.*

Exhibit B.

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF INDIANA.

In Bankruptcy. February 6, 1903.

In the matter of M. Zier & Company, Alleged Bankrupt. } No. 37. In Bankruptcy.

Come now the Inland Steel Company and other, by Ringer, Wilhartz & Louer, their solicitors, and file a petition to have M. Zier & Company adjudged a bankrupt. And said petition is in the words following, to-wit:

The petition of Inland Steel Company, a corporation, John C. Thurston and John Dey, doing business as Dey Time Register Company, respectfully represent that M. Zier & Company, a corporation, has for the greater portion of six months next preceding the date of the filing of this petition, had its principal place of business at New Albany in the State of Indiana in the County of Floyd and State and District aforesaid, and owes debts to the amount of over seventy-five thousand dollars; that your petitioners are creditors of M. Zier & Company, and have provable claims amounting in the aggregate, in excess of the securities held by them, to over Five Hundred Dollars; that the nature and amount of your petitioners' claims are as follows:

Said Inland Steel Company, a corporation, is a creditor of M. Zier & Company, a corporation, in the sum of Nine Hundred and Thirty-five Dollars, evidenced by the notes of said M. Zier & Company, payable January 20th, 1903, given for goods, wares and merchandise sold and delivered.

Said John C. Thurston is a creditor of said M. Zier & Company in the sum of Fifteen Dollars for goods, wares and merchandise sold and delivered.

Said John Dey, doing business as Dey Time Register Company, is a creditor of M. Zier & Company in the sum of One Hundred Dollars, evidenced by the note by the note of said M. Zier & Company, given for goods, wares and merchandise, sold and delivered.

Your petitioners further represent that M. Zier & Company is insolvent; that within four months next preceding the date of the filing of this petition in bankruptcy, the said M. Zier & Company committed acts of bankruptcy as follows:

First. Your petitioners allege upon information and belief that said M. Zier & Company did heretofore, to-wit: on divers dates within four months last past, while insolvent, transfer to the firm of Joseph T. Ryerson & Son of Chicago, and to Minnie M. Zier of Minneapolis, Minnesota, creditors of said M. Zier & Company, certain portions of the property of the said M. Zier & Company, with intent to prefer said creditors over and above the other creditors of said M. Zier & Company, the aggregate value of said property amounting at least to the sum of Five Hundred Dollars.

Second. That the said M. Zier & Company did on divers dates, within four months last past, while insolvent, transfer divers other portions of its said property to divers other persons who were then and there creditors af said M. Zier & Company, and especially to Minnie M. Zier, with intent to prefer such persons over and above the other creditors of M. Zier & Company.

Your petitioners further represent that said M. Zier & Company is engaged in the business of manufacturing boilers and kindred articles in the city of New Albany, Indiana, and has on hand a large stock of merchandise,

machinery and tools, and a large number of outstanding accounts; that under certain proceedings in a State Court a receiver has been appointed of the assets of said corporation, M. Zier & Company and is attempting to collect the assets of said estate, and incurring petty expenses in and about said estate, which must be borne by the creditors thereof; and your petitioners aver that it is absolutely necessary for the preservation of said estate of said M. Zier & Company, for the benefit of all of its creditors, that a Receiver in bankruptcy be appointed herein forthwith; that the total value of said assets of said M. Zier & Company does not exceed in value the sum of Thirty Thousand Dollars.

WHEREFORE your petitioners pray that a Receiver in Bankruptcy may be appointed herein by this Honorable Court, with the usual powers of Receivers in Bankruptcy in similar cases, and that service of this petition, with a subpœna, may be made upon said M. Zier & Company, as provided by the Acts of Congress relating to bankruptcy, and that said M. Zier & Company may be declared by this Court to be a bankrupt within the purview of said Acts

INLAND STEEL COMPANY,
JOHN C. THURSTON,
JOHN DEY, doing business as the
Dey Time Register Company,
By Andrew J. O'Donnell, their
duly authorized agent and
Attorney in Fact.

UNITED STATES OF AMERICA,
District of Indiana.

STATE OF ILLINOIS,
County of Cook. } ss.

Andrew J. O'Donnell, being first duly sworn on oath deposes and says that he is the duly authorized agent and attorney in fact of the above named petitioners; that he has read the foregoing petition by said petitioners subscribed, and knows the contents thereof, and that same is true in substance and in fact, except as to the matters therein alleged to be upon information and belief, and as to those matters he believes it to be true.

Said affiant makes this affidavit as the duly authorized agent and attorney in fact of all the petitioning creditors herein.

ANDREW J. O'DONNELL.

Subscribed and sworn to before me this Fourth day of February A. D. 1903

HELEN WEIL,
Notary Public.

[SEAL.]

And thereupon the following proceedings in the above entitled matter were had to-wit:

Upon the consideration of the petition of Inland Steel Company, John C. Thurston and John Dey, doing business as the Dey Time Register Company that M. Zier & Company be declared a bankrupt, it is ordered that the said M. Zier & Company do appear at this court, as a court of bankruptcy, to be holden at New Albany, in the District aforesaid, on the 28th day of February, 1903, at 9 o'clock in the forenoon

and show cause, if any there be, why the prayer of said petition ought not to be granted; and

It is further ordered that a copy of said petition, together with a writ of subpoena be served on said M. Zier & Co., by delivering the same to it personally or by leaving the same at its last and usual place of abode in said district, at least five (5) days before the day aforesaid.

And thereupon there issued out of the office of the clerk of said court a subpoena in the above entitled matter, in the words following, to-wit:

UNITED STATES OF AMERICA, }
District of Indiana. } *ss.*

To M. Zier & Company in said District Greeting:

For certain causes offered before the District Court of the United States of America, within and for the District of Indiana, as a court of bankruptcy, we command and strictly enjoin you, laying all other matters aside and notwithstanding any excuse that you personally appear before our said District Court to be holden at New Albany, in said District, on the 28th day of February, A. D. 1903, to answer a petition filed by the Inland Steel Company, John C. Thurston and John Dey, doing business as Dey Time Register Company in our said court praying that you may be adjudged a bankrupt and to do further and receive that which our said District Court shall consider in this behalf and this you are in no wise to omit under the pains and penalites of what may befall thereon.

Witness the Honorable A. B. Anderson, Judge of said Court, and the seal thereof, at New Albany, this 12th day of February, A. D. 1903.

NOBLE C. BUTLER, *Clerk*,
By George B. Cardwill,
Deputy Clerk.

Which said subpoena was afterwards, to-wit: on the 19th day of February, 1903, returned into the office of the clerk of said court, with the following return of the marshal endorsed thereon, to-wit:

I received this writ at Indianapolis Feb. 17, 1903, and on same day I served on the within named M. Zier & Company by reading to and in the hearing of Michael Zier Vice President of said company and handing him a true copy of this writ and at same time and place I delivered to him a copy of petition in Bankruptcy, he being the highest officer of said Company found in my district, at New Albany, Floyd County, Indiana. H. C. PETTIT,

U. S. Marshal,

By Alonzo Boyd,

Deputy.

And afterwards, to-wit: upon the 11th day of February, 1903, the Inland Steel Company, by its solicitors, filed its petition in the above entitled matter, in the words following, to-wit:

Your petitioner, Inland Steel Company, respectfully represents that it is a corporation organized under and by virtue of the laws of the State of Illinois and is a resident and citizen of the city of Chicago and State of Illinois. Your petitioner further represents that it is a creditor in amount of Nine Hundred Thirty-five Dollars ($935.) of M. Zier & Company alleged bankrupt, a corporation which has its principal place of business at the city of New Albany, County of Floyd, in the State of Indiana; that a petition has been filed by your petitioner and two other creditors to have said company adjudged a bankrupt which said petition was filed in this court on the 6th of February, A. D. 1903. That it is alleged in said petition that Joseph T. Ryerson & Son and

other creditors therein mentioned have received certain preferences from said alleged bankrupt within four months prior to the filing of said petition, contrary to the statute in such case made and provided, while said bankrupt was insolvent; that at the instance of said Joseph T. Ryerson & Son a receiver has been appointed by the Floyd Circuit Court of Floyd County, Indiana, to take charge of the assets of said alleged bankrupt; that the New Albany Trust Company is the receiver so appointed and that Henry E. Jewett, who is the attorney for said M. Zier & Company is also the Vice President of said New Albany Trust Company; that said receiver is now running the business of M. Zier & Company and is completing certain contracts and for that purpose has employed a large number of men in the manufacturing establishment of said M. Zier & Company and has placed in charge of said plant one Michael Zier, who is the Vice President and Treasurer of said alleged bankrupt; that said Michael Zier is wholly incompetent for said business, that he is wholly unfamiliar with bookkeeping and necessary office work which is essential to the safe conduct of said business, and your petitioner avers that if said receiver is permitted to remain in charge that it would result in injury and detriment of such of the general creditors of said M. Zier & Company who are entitled to participate in said bankrupt estate.

Your petitioner further states that W. W. and J. R. Watts, Attorneys at Louisville, Kentucky, are the attorneys for said Joseph T. Ryerson & Son in said proceedings wherein said New Albany Trust Company was appointed receiver and that said W. W. and J. R. Watts are also the attorneys for said receiver, and your petitioner fears that said receiver is friendly to said Joseph Ryerson & Son and to said alleged bankrupt to the detriment of the creditors at large of the said alleged bankrupt.

Your petitioner further alleges that it is absolutely necessary for the preservation of said estate for the benefit of all of the creditors who shall be entitled to participate therein that a receiver in bankruptcy be appointed herein forthwith to take charge of all of the assets of such alleged bankrupt and administer the same under the directions of this honorable court with the usual powers of receivers in such cases. Wherefore your petitioner prays that a receiver in bankruptcy be appointed forthwith and that such other and further orders be entered herein as to your honor shall seem meet and proper.

INLAND STEEL COMPANY,
By William Wilkartz its duly authorized agent and attorney in fact.

UNITED STATES OF AMERICA,
District of Indiana.
STATE OF INDIANA,
County of Marion. } ss.

William Wilhartz being first duly sworn on oath deposes and says that he is the duly authorized agent and attorney in fact in this behalf of the above named petitioner. That he has read the above and foregoing petition by said petitioner subscribed and knows the contents thereof and that said petition is true in substance and in fact except as to the matters therein alleged to be upon information and belief and as to those matters, this affiant, believes them to be true.

Said affiant makes this affidavit as the duly authorized agent and attorney in fact of said petitioner herein.

WILLIAM WILHARTZ.

Subscribed and sworn to before me this 7th day of February, A. D. 1903. M. H. PEACOCK,
Notary Public.

Commission expires April 19, 1906.

And afterwards, to-wit: upon said 11th day of February, 1903, before the Honorable Albert B. Anderson, judge of said court, the following further proceedings in the above entitled matter were had, to-wit:

Comes now the Inland Steel Company, petitioner in bankruptcy herein, which having filed its petition to have M. Zier & Company declared a bankrupt, now files its verified petition alleging that an emergency exists for the immediate appointment by the court of a Receiver herein, to take charge of the property and effects of said M. Zier & Company pending the hearing of said petition and the appointment of a trustee in bankruptcy herein. And the court being advised after due consideration, now finds that the prayer of said petitioner ought to be granted and that a Receiver ought to be appointed to take charge of the property and effects of said M. Zier & Company, previous to the hearing of said petition and the appointment of a trustee herein.

It is therefore considered and ordered by the court that Frederick D. Connor be and he is hereby appointed as receiver herein of the property of said M. Zier & Company, with authority to take charge and possession of all the same, and particularly the goods, wares and merchandise, books, papers and effects, of or belonging to said M. Zier & Company, located at the city of New Albany, Floyd County, Indiana, and now in the hands of the New Albany Trust Company as receiver of said M. Zier & Company appointed by the Floyd Circuit Court, of Floyd County, Indiana. And said Receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said city of New Albany, together with all the tools, machinery, appliances, material and finished products within and about said plant at said city of New Albany, which plant is located at the corner of Pearl and Oak Streets

of said city, and all other property of said M. Zier & Company wheresoever found and situated.

It is further ordered and adjudged by the court that the New Albany Trust Company be and it is hereby required to deliver up to said Frederick D. Connor, as Receiver, all the said property and effects of said M. Zier & Company now in its possession and to refrain hereafter from interfering in any way with the said Receiver's possession and control of the same.

It is further ordered that before entering upon the duties of his said trust herein, the said Frederick D. Connor shall execute to the clerk of this court, and file with the clerk of this court, a bond and sureties to the approval of this Court in the sum of Ten Thousand Dollars (10,000) for the faithful discharge of his duties as such Receiver and take the oath required by law of said office.

And afterwards, to-wit: upon said 11th day of February, 1903, The Inland Steel Company, by George H. Hester, its solicitor, filed its supplemental petition herein, in the words following, to-wit:

The petitioner herein, the Inland Steel Company, for further and supplemental petition herein, and as additional acts of bankruptcy committed by the said M. Zier & Company avers:

That on or about the 30th day of December, 1902, and previous to the filing of the original petition herein, on the 6th day of February, 1903, the said M. Zier & Co. was made the defendant in an action brought in the Floyd Circuit Court, in Floyd County, Indiana, by Joseph T. Ryerson & Son, in which the said Joseph Ryerson & Son prayed for a Receiver to take charge of the property and effects of the said M. Zier & Company; that the said M. Zier & Co. upon the filing of said action immediately appeared thereto waiv-

ing services of summons therein and consented to the appointment by the Floyd Circuit Court of the New Albany Trust Company as the receiver of its property and manufacturing establishment; that the said receiver was thereupon so appointed by the Floyd Circuit Court, and immediately took charge of all the property of said M. Zier & Co., and ever since said time said New Albany Trust Company as such receiver has been in complete charge of said property operating the same by the consent of said M. Zier & Co., and under orders of the Floyd Circuit Court; that said New Albany Trust Company as such receiver is represented by W. W. & J. R. Watts, Attorneys at Law, of Louisville, Ky., who are also the attorneys for the said Jos. T. Ryerson & Son, and who are procuring orders from the Floyd Circuit Court for the government of the matters of the said receiver; that said receiver is now under the orders of said court operating the manufacturing plant and boiler works of said M. Zier & Co. at the city of New Albany, and the petitioner fears that he is doing so in the interest of the said Jos. T. Ryerson & Son, and against the interest of the other creditors herein. That said receiver was appointed and put in charge of the property of the said M. Zier & Co. by the said Floyd Circuit Court because of the gross insolvency of the said M. Zier & Co.

INLAND STEEL CO.,
By George H. Hester,
their attorney.

STATE OF INDIANA, }
County of Marion. } *ss.*

George H. Hester being duly sworn on his oath says that matters stated in the foregoing petition are true as he verily believes.

GEORGE H. HESTER.

Subscribed and sworn to before me this 11th day of February, 1903.

NOBLE C. BUTLER,
Clerk of the U. S. District Court.

And afterwards, to-wit: on the 17th day of February, 1903 before the Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above entitled matter were had, to-wit:

This cause coming on now to be heard upon the petition of Frederick D. Connor, filed herein on the 16th day of February, A. D. 1903, for the instruction of the court concerning the property and assets of said M. Zier & Company, which are now in the possession of the New Albany Trust Company, as receiver of the Floyd Circuit Court, in a suit therein pending against said M. Zier & Company, because of their insolvency; and the petitioning creditors in this cause and said Connor, receiver as aforesaid, being now present and represented by George H. Hester and William Wilhartz, their solicitors, and said New Albany Trust Company, receiver as aforesaid, being now present and represented by Henry E. Jewett, its Vice President, and by William W. Watts, its solicitor, and after argument by counsel, the said New Albany Trust Company, as receiver of the Floyd Circuit Court, by its said Vice President, having voluntarily offered and agreed, by and with the consent and approval of said William W. Watts, its solicitor, in open court, to surrender full and immediate possession and control of the property and assets of said M. Zier & Company, in its possession or under its control, as receiver of the Floyd Circuit Court, to said Connor, as receiver of this court, upon the presentation by him to said New Albany Trust Company of a certified copy of the order for his

appointment as such receiver heretofore made by this court. It is now hereby ordered by the court that said Connor receiver as aforesaid, forthwith present a certified copy of the order for his appointment as such receiver to the said New Albany Trust Company, and immediately thereupon take full possession and control of the property and assets of said M. Zier & Company that are now in the possession or under the control of said New Albany Trust Company as receiver of the Floyd Circuit Court.

And afterwards, to-wit: on the 21st day of February, 1903, Frederick D. Connor Receiver of said M. Zier & Company, filed his petition herein, in the words and figures following, to-wit:

The undersigned, Frederick D. Conner, heretofore appointed as receiver, by this court, to take charge of the property and effects of the said M. Zier & Company, respectfully shows to the court:

That subsequent to the order made by the court herein, on the 17th day of February, 1903, directing the petitioner as receiver to present a certified copy of said order for his appointment as such receiver to the New Albany Trust Company, and immediately thereupon take full possession and control of the property and assets of M. Zier & Company, then in the possession and under the control of the said New Albany Trust Company, as receiver of the Floyd Circuit Court, and in obedience to the terms of said order, the said petitioner did on the 19th day of February, 1903, present to the New Albany Trust Company a certified copy of the said order for his appointment as such receiver, and demanded of said New Albany Trust Company as receiver that it turn over to him the full possession and control of all the property and assets of M. Zier & Company then in its possession as receiver of the Floyd Circuit Court; that

thereupon the said Trust Company, by and through Henry E. Jewett, its vice-president, submitted to the petitioner a certified copy of a petition filed by said receiver before the Floyd Circuit Court in chambers, stating that it was ready and willing to turn over to the petitioner the property and assets of said M. Zier & Company in its hands as receiver and further stating that it had not yet been able to make up its accounts as receiver, and praying for an order of said court authorizing it to turn over to this petitioner the property and assets of said M. Zier & Company now in its hands, together with any balance in cash which might remain after such statement of its accounts shall be made up and settled, and asking leave of court to resign as receiver of said M. Zier & Company; which said certified copy of petition is filed with this petition marked Exhibit "A," and made a part hereof; that said New Albany Trust Company, by said Henry E. Jewett, its vice-president, delivered to this petitioner a communication asking that the petitioner defer action until the said New Albany Trust Company could render its accounts and have the same passed on by the Floyd Circuit Court.

The petitioner further represents that he thereupon declined to grant further time, but demanded immediate possession of all the property and assets of said M. Zier & Company in the hands of said New Albany Trust Company, as receiver, and that the said New Albany Trust Company by said Jewett, its vice-president immediately turned over to this petitioner the custody of the building and plant of the said M. Zier & Company, within which is contained all of the property of said M. Zier & Company, excepting certain books and cash belonging to it; that thereupon the petitioner immediately proceeded to take possession of the tools, machinery, appliances, assets and all the property

contained in the manufacturing plant of said M. Zier & Company, which this petitioner believes embraced all of the property of said M. Zier & Company, excepting said books and cash in the possession of said New Albany Trust Company, receiver; that the petitioner thereupon put in charge a day-watchman to hold possession of said property during the day and a night-watchman to hold possession thereof during the night, and so retained possession of said plant until the 20th day of February 1903, at about 7.30 P. M.

The petitioner further says that on the 20th day of February 1903, at about 7.00 P. M. possession of said manufacturing plant and all the property of said M. Zier & Company was demanded of him by Charles D. Kelso, of New Albany, Indiana, as receiver appointed by the Floyd Circuit Court, in place of the New Albany Trust Company, then removed as receiver of said M. Zier & Company; that said demand was refused by this petitioner; that thereupon the petitioner was served by Raymond J. Morris, sheriff of Floyd County, Indiana, and Claude Citizen, Deputy Sheriff of said Floyd County, with a certified copy of on order of the Floyd Circuit Court made in the matter of the receivership of M. Zier & Company, pending before it, a copy of which is filed herewith marked Exhibit B and made part hereof; that at the same time the petitioner was served with a writ issued by the Floyd Circuit Court on the 20th day of February, 1903, to the Sheriff of Floyd County requiring him to forthwith take from the petitioner possession of the boiler plant of M. Zier & Company, together with all the tools, machinery, appliances, books, papers, accounts, choses in action and all other property belonging to said M. Zier & Company and finally the premises of said M. Zier & Company, at its plant in the City of New Albany, Indiana, a copy of which order is filed herewith marked Exhibit C, and made part hereof.

The petitioner further says that thereupon the said Raymond J. Morris, sheriff of said County of Floyd, forcibly took possession, from this petitioner and his agents and employes in charge of said manufacturing plant of said M. Zier & Company, of said property and assets of M. Zier & Company and delivered the same over to Charles D. Kelso, appointed as receiver of said property by the Floyd Circuit Court as aforesaid; that thereupon said Charles D. Kelso immediately took possession of said plant and of such property, and that he, the said Kelso, together with his agents and employes, are now in the possession of the same and restraining this petitioner from the possession thereof and the exercise of any authority over the same.

That this petitioner believes the above stated proceedings were procured to be had by William W. Watts, Esq., of Louisville, Ky., who during the continuation of the New Albany Trust Company, as receiver of M. Zier & Company, represented said Trust Company as such; that said Charles D. Kelso is now represented by one D. A. Sachs, Esq., of Louisville, Ky., an attorney-at-law, and that the petitioner believes that said Sachs also assisted in procuring the orders of the said Floyd Circuit Court above set out, and the petitioner further says that he verily believes the forcible removal of said property from his possession and control as receiver appointed by this court as aforesaid, was brought about by the joint action and efforts of said Charles D. Kelso, as receiver, and Charles D. Kelso, individually, and William W. Watts, as attorney for said New Albany Trust Company, and D. A. Sachs, attorney for said Charles D. Kelso, receiver.

Wherefore the premises being considered, the petitioner prays the court that the said Charles D. Kelso, as receiver of said M. Zier & Company, and Charles D. Kelso, indi-

vidually, Raymond J. Morris, as sheriff of said Floyd County, Indiana, and Raymond J. Morris, individually, Claude Citizen, as deputy sheriff of said Floyd County, and Claude Citizen, individually, Thomas Smithwick, as custodian of said plant of M. Zier & Company, and Thomas Smithwick, individually, William W. Watts, as attorney for said New Albany Trust Company, and D. A. Sachs, as attorney for said Charles D. Kelso, Receiver, be enjoined and restrained from in any manner taking or keeping from the possession of this petitioner said property and estate of said M. Zier & Company; that they may be required and directed to immediately redeliver to this petitioner as such receiver said property and estate so unlawfully taken from them, and that they may be cited to appear before this court at a time fixed by this court and show cause why they should not be punished for contempt for the violation of the orders of this court heretofore made herein.

And the petitioner further prays for directions as to what he shall do with respect to said property.

FREDERICK D. CONNER.

STATE OF INDIANA, }
County of Marion. } *ss.*

Frederick D. Conner, being duly sworn, on his oath, deposes and says, that the matters stated in the foregoing petition are true as he verily believes.

FREDERICK D. CONNER.

Subscribed and sworn to before me this 21st day of February, 1903.

NOBLE C. BUTLER,
Clerk.

FRED D. CONNER,
Receiver U. S. District Court,
District of Indiana.

In view of your demand that as receiver of the Floyd Circuit Court we deliver you the property of M. Zier & Company, as such receiver will state.

We this morning filed before Judge of the Floyd Circuit Court in chambers, report, a copy of which is attached hereto. Thereupon the Judge stated orally that he wanted us to hold the property until our accounts as receiver were rendered and passed upon. We think this might be done tomorrow, and if you are willing to defer action until then it will relieve us of embarrassment in the premises.

On the other hand if you insist on immediate surrender of the property to you, we are bound to say that we believe that to carry out in good faith the understanding with the Honorable Judge of the United States District Court of Indianapolis and our vice-president, H. E. Jewett, we ought to surrender the property to you at once.

Very truly yours,
THE NEW ALBANY TRUST COMPANY,
By H. E. Jewett,
Vice President

February 19th, 1903.

STATE OF INDIANA, } *ss.*
Floyd County. }

Joseph T. Ryerson & Son, }
vs. }
M. Zier & Company. }

To the Honorable Judge of the Floyd Circuit Court, in Chambers:

The New Albany Trust Company, Receiver in the above entitled cause, respectfully shows to this court that in pursuance of the order made by this court it appeared before

Judge A. B. Anderson, of Indianapolis, Judge of the United States District Court for the District of Indiana, on Monday, the 16th day of February, 1903, and that upon the hearing in that court this receiver stated to the Honorable Judge of said United States District Court, that it was ready and willing to turn over to the receiver appointed by the Honorable Federal Court in the bankruptcy proceedings of M. Zier & Company then pending in said court, the property and assets of said M. Zier & Company in the hands of this receiver, and this receiver further states that it has not yet been able to make up its accounts as receiver, but that it is now preparing the same to be submitted to this court; but that it is ready to turn over to Frederick D. Conner, the receiver appointed by the United States District Court in bankruptcy, all of the property of the said M. Zier & Company, and this receiver now prays for an order of this court authorizing him to turn over to said Frederick D. Conner, the property and assets of said M. Zier & Company now in its hands, together with any balance in cash which may remain after such statement of its accounts shall be made up and settled, and that upon delivering said property to said Frederick D. Connor, receiver aforesaid, it be discharged from all further liability for or on account of said property or assets of said M. Zier & Company so turned over to such Connor as such receiver.

This receiver further asks that upon making up and presentation of its account for allowance to this court, that it be allowed to resign as receiver of the said M. Zier & Company and that upon the approval of its accounts its said resignation be accepted by this court, and that it be fully and finally discharged as such receiver.

All of which is respectfully submitted,

THE NEW ALBANY TRUST COMPANY,

By Henry E. Jewett, *Vice President.*

Henry E. Jewett, being duly sworn on his oath says that he is the vice-president of the New Albany Trust Company, and makes this affidavit on behalf of said company; that the statements contained in the foregoing petition are true in substance and fact as he verily believes.

HENRY E. JEWETT.

Subscribed and sworn to before me this 19th day of February, 1903.

CHARLES B. SCOTT,
Clerk F. C. C.
By William Rouff,
Deputy.

STATE OF INDIANA, } *Sct.:*
Floyd County. }

Be it remembered, that at the January Term, 1903, of the Floyd Circuit Court, on the 14th day of February, 1903 before the Hon. William C. Utz, Sole Judge, among other the following proceedings were had, to-wit:

Joseph T. Ryerson & Son, *Plaintiff.*
vs.
M. Zier & Co., *Defendant.*

ORDER ON PETITION OF RECEIVER CONCERNING BANKRUPTCY PROCEEDINGS.

Came the New Albany Trust Company, receiver herein and files its petition herein showing to the Court divers matters concerning the filing of a petition in the District Court of the United States for the District of Indiana, by the Inland Steel Company, John C. Thruston and Dey Time Register Company, as creditors of said M. Zier & Company

in involuntary bankruptcy and a petition seeking the appointment of a receiver therein to take charge of the assets in this Court's possession through its receiver herein, whereupon such an order was entered, Frederick D. Connor being named as receiver and being directed to take possession of such assets, and further showing to the Court that the record in said cause disclosed the fact that said court was not fully advised as to the various orders, injunctions, restraining orders and estoppels by entries of appearance and participation in these proceedings by divers creditors of this estate, including said Inland Steel Company and Dey Time Register Company, petitioning creditors therein, and further showing that because of the immediate adjournment of this court, and its convention not being again had until March 9, 1903, and the operation of the plant herein made by and with the advice of much more than a majority in number and amount of the creditors herein, including said Inland Steel Company, such petitioning creditor in bankruptcy and this court now, after having read said petition and having considered the various exhibits referred to in such receiver's petition, and the entire record of this cause and being fully advised, is of the opinion that had said District Court of the United States for the District of Indiana been fully advised of the divers matters herein occurring it would not have entered such order as has been therein entered; that because of the comity existing between the courts of this Country, State and Federal, its order would at most have directed any attempt to take the assets herein to be by intervention in this cause and that only, and being of the opinion that said District Court will coincide with these views and a state of necessity for the entry of this order existing, it is now ordered that the Receiver herein conduct the operation of the plant herein as hertofore ordered and

directed; that said Inland Steel Company, John C. Thruston, Dey Time Register Company, Frederick D. Connor, individually and as Receiver, and Henry C. Pettit, individually and as Marshal of the District Court of the United States for the District of Indiana, and all others in any capacity, be and they are hereby enjoined from in any wise molesting, interfering with, or attempting by legal process or otherwise to take possession of the estate of M. Zier & Co., in the hands of this Court through its Receiver herein, and in the hands of said Receiver until the further order of this Court and except by intervention in this cause.

And said Receiver is now hereby ordered and directed, through its attorney, to proceed to Indianapolis, Indiana, and there, by a limited appearance and by protestation against appearance, only, by petition upon such appearance only, lay before said District Court of the United States for the District of Indiana the facts with regard to the matters herein, said injunction, restraining order and said estoppels, and to suggest to said Court the orders of this Court and the fact that had it been fully informed, as is believed by this Court, its order with respect to the assets herein would, at the most, have been a direction to make an application to this Court at the proper time and in the proper way, for delivery of the said assets to such District Court's receiver or trustee, after proper disposition and settlement of the matters herein.

The Court being further advised and on motion of said New Albany Trust Company, Receiver, it is ordered that the Inland Steel Company, John C. Thurston, The Dey Time Register Company, be and they are hereby ordered to appear and show cause why they have prosecuted said petition in involuntary bankruptcy, why they have filed said petition seeking the appointment of a receiver for the assets of this

estate, why they have sought to take from this court the assets of this estate, why they should not be punished for contempt for disobeying the orders of this Court without first obtaining leave of the Court by petition of intervention or order in this cause. And they are hereby commanded to show such cause on or at the time of the first day of the next term of this Court. And service of a copy of this order upon Jacob Hoerter and George H. Hester because of their apparent representation of said petitioning creditors and then said co-counsel for the purpose of this show cause order shall be deemed sufficient for the service thereof on all said persons and parties.

And it is further ordered that this Court shall retain such control of said matters as may be necessary for the purpose of the entry of any and all such orders as may be deemed proper and necessary herein and therein.

And Jacob Herter and George H. Hester such attorneys now being present in court and Hester having been heard in opposition to the said petition and having notice of the entry of this order, It is now ordered that no other or further notice hereof need be given the said Inland Steel Co., John C. Thurston, and Dey Time Register Co., petitioners in said bankruptcy proceedings. And comes now C. D. Kelso and asked leave of the Court to withdraw as the attorney of record for the following named parties: United Gas and Electric Company; United States Tube Company, Indiana Water Company and Simon E. David and the Court now permits the said C. D. Kelso to withdraw herefrom."

STATE OF INDIANA, }
County of Floyd. } *ss.*

I, Charles B. Scott, Clerk of the Floyd Circuit Court, within and for the County of Floyd and State of Indiana

do hereby certify that the above and foregoing is a full, true and complete copy of an entry of record and order of Court made in the receivership of M. Zier & Company, and in the case of Joseph T. Ryerson & Son versus M. Zier & Company, as the same appears of record in my office.

Witness my hand and the seal of said Court hereto affixed at New Albany, Indiana this 20th day of February 1903.

CHARLES B. SCOTT,
Clerk Floyd Circuit Court.
By William Ruoff,
Deputy.

[SEAL.]

(Copy.)

STATE OF INDIANA.

To the Sheriff of Floyd County, Greeting:

By order of the Honorable William C. Utz, Judge of the Floyd Circuit Court, which order was made in Vacation, you are hereby commanded and required to forthwith take from Frederick D. Connor the possession of the boiler plant of M. Zier & Co. situated on the northeast corner of Pearl and Oak Streets in the City of New Albany, Indiana together with all the tools, machinery, appliances, books, papers, accounts, choses in action and all other personal property belonging to said M. Zier & Co. and found in the premises of said M. Zier & Co. at said point in the City of New Albany, Indiana being the same property wrongfully and without leave of this Court surrendered to said Frederick D. Connor by the New Albany Trust Company formerly receiver of M. Zier & Co. and you are further required by the order of said Judge of said Court to forthwith deliver said above described property to Charles D. Kelso receiver of said M. Zier & Co. and of this writ make due service and immediate return thereof.

Witness Charles B. Scott, Clerk of the Floyd Circuit Court and the seal hereto affixed at the Court House in the City of New Albany this 20th day of February, 1903.

CHARLES B. SCOTT,
Clerk Floyd Circuit Court.
By William F. Ruoff,
Deputy.

[SEAL.]

And afterwards, to-wit, on the 21st day of February, 1903, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings were had in the above entitled cause, to-wit:

This cause coming on now to be heard on the petition of Frederick D. Connor, receiver of this court, filed herein on the 21st day of February, 1903, for an order of injunction restraining Charles D. Kelso, as receiver of M. Zier & Company under appointment of the Floyd Circuit Court, Charles D. Kelso, individually, Raymond J. Morris, Sheriff of Floyd County, Indiana, Raymond J. Morris, individually, Claude Citizen, deputy sheriff of Floyd County, Indiana, Claude Citizen, individually, Thomes Smithwick, custodian of the property of said M. Zier & Company under alleged appointment of Charles D. Kelso, as receiver of the Floyd Circuit Court, Thomas Smithwick, individually, William W. Watts, and D. A. Sachs, individually, and each of them, from detaining the possession of the property of said M. Zier & Company from said Frederick D. Connor, receiver of this court, and for an order requiring said parties and each of them to re-deliver up to said Frederick D. Connor, receiver of this court, all of said property, and the Court having considered said petition and it being shown to the satisfaction of the court that the matters stated therein are true,

It is now ordered by the Court that Charles D. Kelso, as receiver of M. Zier and Company under the appointment of

the Floyd Circuit Court, and individually, Raymond J. Morris, as sheriff of Floyd County, Indiana, and individually, Claude Citizen, deputy sheriff of Floyd County, Indiana, and individually, Thomas Smithwick, custodian of the property of said M. Zier and Company under an alleged appointment of Charles D. Kelso as receiver of the Floyd Circuit Court and individually, William W. Watts and D. A. Sachs, as attorneys for Charles D. Kelso, receiver as aforesaid, and individually, and each of them be and they are hereby required to appear before this court at Indianapolis in this District on Wednesday the twenty-fifth day of February, 1903, at nine o'clock, a. m. of said day and show cause if any they have why they should not re-deliver the property of M. Zier and Company into the possession and custody of Frederick D. Connor, as receiver of this court, and in the meantime, and until the further order of this court that they and each of them, their agents, attorneys, servants and employees, and each of them be and they are hereby restrained and prohibited from in any way interfering with said property, or making any disposition of the same.

It is further ordered by the Court that Charles D. Kelso as receiver of M. Zier and Company under the appointment of the Floyd Circuit Court, and individually, Raymond J. Morris, sheriff of Floyd County, Indiana, and individually, Claude Citizen, deputy sheriff of Floyd County, Indiana, and individually, Thomas Smithwick, custodian of the property of said M. Zier and Company under an alleged appointment of Charles D. Kelso as receiver of the Floyd Circuit Court, William W. Watts and D. A. Sachs as attorneys for Charles D. Kelso as such receiver, and individually, and each of them, are hereby required to appear before this court at Indianapolis in this District on Wednesday the twenty-fifth day of

February, 1903, at nine o'clock a. m. of said day, and then and there show cause why they should not be punished for contempt for the violation of the orders of said court heretofore made herein.

It is further ordered by the court that the Marshal of this District shall serve each of the parties named in the foregoing order by the delivery of a copy thereof to them and each of them.

And afterwards, to wit: on the 25th day of February, 1903, before the Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above entitled matter were had, to-wit:

Raymond J. Morris and Claude Sittason appear in person and by Evan B. Stotsenberg, their attorney, and Charles D. Kelso and Thomas Smithwick appear in person and by William A. Ketcham, their attorney, and file their several answers to the petition of the Receiver for orders against them, and the Receiver files his several replies thereto.

And afterwards, to-wit: on the 25th day of February, 1903, aforesaid, before the Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

It is ordered by the court, that, so far as the proceedings upon the petition of the Receiver filed on the 21st day of February, 1903, are instituted against the parties named therein for a contempt of this court, they shall be docketed in this court at Indianapolis and henceforth conducted under the title of the United States against the parties aforesaid:

UNITED STATES OF AMERICA, }
District of Indiana. } *ss.*

I, Noble C. Butler, clerk of the District Court of the United States within and for said District, do hereby certify

that the above and foregoing is a full and true and complete transcript of the record and files in the matter of M. Zier & Company, alleged bankrupt, except the petition of Frederick D. Connor, Receiver in said matter, filed on the 16th day of February, 1903, and the order of adjudication in bankruptcy, entered on the 9th day of March, 1903, as fully as the same appear upon the records and files now in my office.

WITNESS my hand and the seal of said Court, at Indianapolis in said District, this 11th day of March, A. D. 1903.

NOBLE C. BUTLER,
Clerk.

UNITED STATES DISTRICT COURT,
FOR THE DISTRICT OF INDIANA.

IN THE MATTER OF M. ZIER & CO. ALLEGED BANKRUPT
No. 37 IN BANKRUPTCY, AND

UNITED STATES,
vs.
Charles D. Kelso,
William W. Watts,
and others.
No. 6377.

THE SEPARATE RESPONSE AND PLEAS OF WILLIAM W. WATTS TO THE RULE AND INFORMATION HEREIN:

1. The respondent and defendant, William W. Watts, says he is not guilty of the alleged contempt stated in the said rule and information, or either of them.

2. Denying that he committed any act or advised or consented to the commission of any act in disobedience of any order of the District Court of the United States for the

District of Indiana entered or made by said Court in the matter of M. Zier & Company, bankrupts, case No. 37 pending in said Court at New Albany, Indiana, and denying further that he did in any way, either directly or by aiding, abetting, or advising, forcibly, or in any other way take from Frederic D. Connor, Receiver in said bankrupt proceedings, the property, goods and chattels of said M. Zier & Co., bankrupt, or any of them, or in any way, either directly, or by aiding, abetting, or advising withhold the custody of the said property, goods and chattels, or any of them, from the said Frederic D. Connor, Receiver: Yet the defendant and respondent says that the orders of the said District Court of the United States made in said bankrupt proceedings ordering and directing said Frederic D. Connor, Receiver, to take said property, goods and chattels of M. Zier & Co. into his custody, were and are void, because he says the said court had no jurisdiction to make said orders, or either of them, and the making of said orders, and each of them was beyond the power of the said Court; and the possession of said property by said Frederic D. Connor, Receiver, was wrongfully and unlawfully obtained by him, and the re-taking of said property from the possession of said Receiver, under and pursuant to the orders and writ of the Floyd County (Indiana) Circuit Court, was a lawful and proper taking. All of which will appear from the affirmative statements of the particular facts hereinafter made.

3. This defendant and respondent further states that on the 30th day of December, 1902, Joseph T. Ryerson & Son filed their certain complaint in the Floyd Circuit Court of the State of Indiana against M. Zier & Co., defendant, and on the same day caused to be issued by the Clerk of said Floyd Circuit Court, and there was duly issued by the said

Clerk a summons upon the said complaint against M. Zier & Co., which said summons on the same day of its issuance came duly to the hands of the Sheriff of Floyd County, Indiana, and was by him on the same day duly served on the defendant, M. Zier & Co. The said complaint of Joseph T. Ryerson & Son against M. Zier & Co. so filed in the Floyd Circuit Court averred an indebtedness of $15,000 of the said defendant, M. Zier & Co., to the plaintiff, Joseph T. Ryerson & Son, upon certain promissory notes stated in the complaint, and the said complaint prayed judgment in favor of said plaintiffs against said defendants in said sum of money.

The said complaint averred these further facts, that the defendant, M. Zier & Co., is a corporation duly created and organized under the laws of the State of Indiana, and authorized to and was carrying on as such corporation the business of manufacturing boilers in the City of New Albany, in the County of Floyd and State of Indiana; that the said business was a large business; that the said defendant was indebted in the aggregate to divers persons in at least the sum of $65,000; that it was unable to meet its said obligations; that its creditors were threatening to enter suits against it; that the property and assets of said defendant corporation consisted of a manufacturing plant, which was in operation, and which was employed in filling unfinished orders, and working on unfinished contracts; that the defendant was without means or money with which to continue the operation of its said business, and that if suits should be instituted against it, and its property seized upon executions or attachments, the assets and property of the defendant would be dissipated and its plant rendered much less valuable to its creditors generally than if the said property were properly preserved and continued as a going concern; and

that the property, funds and profits of the business of the said defendant were in danger of being lost and materially injured and destroyed, unless a Receiver were immediately appointed to take charge of said property and hold the custody and possession thereof, and preserve the same for such disposition thereof as the Court might adjudge.

The said Floyd Circuit Court, of the State of Indiana, and the Judge thereof in vacation were and are by the Statutes and laws of the State of Indiana authorized and empowered to appoint Receivers of and for insolvent corporations and their property and assets; that the said Floyd Circuit Court is a constitutional Court, and the Judge thereof a constitutional officer, made such by the Constitution of the State of Indiana, and the said Floyd Circuit Court is by the Constitution and laws of the State of Indiana a Court of general, original jurisdiction.

On the same day on which said complaint was as aforesaid filed in the Floyd Circuit Court, and after it was filed and after the issuance of summons thereon, the plaintiffs in said action of Joseph T. Ryerson & Son, after due notice thereof to the defendant, M. Zier & Co., moved the Hon. William C. Utz, who was and is the duly elected, commissioned, qualified and acting Judge of the said Floyd Circuit Court, to appoint a Receiver of the property and assets of the defendant, M. Zier & Co., in pursuance of the prayer of the said complaint. The said defendant, M. Zier & Co., appeared to said motion and, after due consideration thereof, the said Judge sustained said motion and appointed by his order, duly made and entered, the New Albany Trust Company as Receiver of the said defendant, M. Zier & Co., and of all of its assets and property. The said New Albany Trust Company is a corporation created and organized under the laws of the State of Indiana with full corporate powers,

among other things to act as Receiver under the appointment of Courts. That the said New Albany Trust Company immediately upon its said appointment duly qualified as such Receiver, and then and there took upon itself the duties of said Receivership, and took the oath as required by law and by said order of appointment. That immediately after its said appointment and qualification as Receiver aforesaid, and on the same day on which it was appointed as such Receiver, and under the order of the said Floyd Circuit Court, the said New Albany Trust Company, as such Receiver, took into its possession all of the said property and assets of the said defendant, M. Zier & Co, That after its said appointment, the said Receiver, made out an inventory of the property of the said M. Zier & Co., which it had taken possession of under its said appointment as such Receiver on the 30th day of December, 1902, and caused the same to be appraised, which inventory and appraisement were filed in the said Floyd Circuit Court in said action, and said inventory shows, and it is true, that the appraised value of said property was about $28,500. That on the 16th day of January, 1903, the said Receiver filed in the Floyd Circuit Court its report and petition wherein it sought the advice and instruction of said Court with respect to the continuance of the operation of said plant and prayed the Court that a time be fixed for the hearing of said report and petition, and further prayed that said M. Zier & Co. and its officers, and the creditors of said M. Zier & Co., be notified by mail and by publication of the time and place of the hearing of said report and petition, and that the said creditors be requested to appear and make known their objections, if any, to the continuance of the operation of the plant of the said M. Zier & Co. Said petition further prayed that all creditors of M. Zier & Co. be required to prove their

claims against said estate by filing proof thereof with the said Receiver, or by intervening petition in said case, and that all creditors and persons be restrained and enjoined from prosecuting suits involving said assets in any manner except by intervening petition in said action.

And thereupon, upon consideration of said petition, the Floyd Circuit Court made a certain order on the 16th day of January, 1903, directing said Receiver to continue the operations of the said business of the said M. Zier & Co. and to carry out certain contracts for manufacturing boilers and appliances, which were stated in said order, and further directed that a hearing be had of the creditors of the said M. Zier & Co. on the 24th day of January, 1903.

On the 24th day of January, 1903, the time fixed for the hearing of the said creditors of the said defendant, it was made to appear to the said Court by the said Receiver that all of the creditors of the said M. Zier & Co., as shown by the books of the said M. Zier & Co., had been notified by the said Receiver to be present on said 24th day of January, 1903, to be heard on said matters, and on said day a large majority in number and amounts of the creditors of the said M. Zier & Company appeared in said Court, among whom was the Inland Steel Company, and were heard upon the said petition of said Receiver, and thereby they became and were and are parties to said action; and after said hearing and the Court being sufficiently advised, the said Court ordered and directed that the said Receiver carry out and complete all unfinished contracts of the said defendant, M. Zier & Co., and the said Court gave to said Receiver power and authority to purchase new material for this purpose, but ordered said Receiver not to make any new contracts, and gave to said Receiver divers other orders and directions, and further ordered that all creditors and other persons be

enjoined and restrained from prosecuting any claims or suits against said estate in the hands of said Receiver except by intervening in said cause, or by first obtaining leave of said Court in said action.

The respondent and defendant further states that on the 6th day of February, 1903, the Inland Steel Company, a creditor who had appeared and was a party to said action in said Floyd Circuit Court, and John C. Thruston and John Dey doing business as the Dey Time Register Company, filed their certain petition in involuntary bankruptcy in the District Court of the United States for the District of Indiana against M. Zier & Co. alleging certain acts of bankruptcy committed by M. Zier & Co. and praying that the said M. Zier & Co. be adjudged a bankrupt. The said petition in bankruptcy further alleged "That, under certain proceedings in a State Court, a Receiver has been appointed of the assets of said corporation, M. Zier & Co., and is attempting to collect assets of said estate and incurring petty expenses in and about said estate which must be borne by the creditors thereof, and your petitioners aver that it is absolutely necessary for the preservation of said estate of M. Zier & Co. for the benefit of all of its creditors that a Receiver in bankruptcy be appointed herein forthwith."

On the 11th day of February, 1903, the said Inland Steel Company filed in said proceedings in bankruptcy its certain petition in which it stated among other things "That at the instance of said Joseph T. Ryerson & Son, a Receiver has been appointed by the Floyd Circuit Court of Floyd County, Indiana, to take charge of the assets of said alleged bankrupt; that the New Albany Trust Company is the Receiver so appointed, and that Harry E. Jewett who is the attorney for said M. Zier & Co. is also the Vice President of said New Albany Trust Company; that said Receiver

is now running the business of M. Zier & Co. and is completing certain contracts and for that purpose has employed a large number of men in the manufacturing establishment of said M. Zier & Company and has placed in charge of said plant one Michael Zier who is the Vice President and Treasurer of said alleged bankrupt; that said Michael Zier is wholly incompetent for said business; that he is wholly unfamiliar with bookkeeping and necessary office work which is essential to the safe conduct of said business, and your petitioner avers if said Receiver is permitted to remain in charge that it would result to the injury and detriment of such of the general creditors of said M. Zier & Co. who are entitled to participate in said bankrupt estate.

"Your petitioner further states that W. W. and J. R. Watts, attorneys at Louisville, Ky. are the attorneys for said Joseph T. Ryerson & Son in said proceedings wherein the said New Albany Trust Company was appointed Receiver and that said W. W. & J. R. Watts are also attorneys for said Receiver, and your petitioner fears that said Receiver is friendly to said Joseph T. Ryerson & Son and said alleged bankrupt to the detriment of the creditors at large of said alleged bankrupt. Your petitioner further alleges that it is absolutely necessary for the preservation of said estate for the benefit of all the creditors who shall be entitled to participate therein that a Receiver in bankruptcy be appointed herein forthwith to take charge of all the assets of said alleged bankrupt and administer the same under the directions of this honorable court with the usual powers of Receivers in such cases. Wherefore your petitioner prays that a Receiver in bankruptcy be appointed forthwith and that such other and further orders be entered herein as to Your Honor shall seem meet and proper."

And upon the same day, to-wit, on the 11th day of February, 1903, the said District Court of the United States

for the District of Indiana in said bankrupt proceedings, upon consideration of said petition filed by the Inland Steel Company, entered and made an order directing among other things as follows, to-wit:- "It is therefore considered and ordered by the Court that Frederick D. Connor be and he is hereby appointed as Receiver herein of the property of said M. Zier & Co. with authority to take charge and possession of all the same and particularly the goods, wares and merchandise, books, papers and effects of or belonging to said M. Zier & Co. located at the City of New Albany, Floyd County, Indiana, and now in the hands of the New Albany Trust Company, as Receiver of said M. Zier & Co., appointed by the Floyd Circuit Court of Floyd County, Indiana. Said Receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said City of New Albany, together with all the tools, machinery, appliances, materials and finished products within and about said plant at said City of New Albany, which said plant is located at the corner of Pearl and Oak Streets in said city and all other property of said M. Zier & Company wheresoever found and situated. It is further ordered and adjudged by the Court that the New Albany Trust Company be and it is hereby required to deliver up to said Frederic D. Connor as Receiver all the said property and effects of said M. Zier & Company now in its possession, and to refrain hereafter from interfering in any way with the said Receiver's possession and control of the same."

And Frederic D. Connor duly accepted said appointment as the Receiver of the District Court of the United States for the District of Indiana in said bankrupt proceedings and duly qualified and executed bond as such as is required in the said order of appointment.

On the 13th day of February, 1903, Frederic D. Connor, as Receiver of the said United States District Court in said

bankrupt proceedings, and acting under the order appointing him as such Receiver, as defendant and respondent was informed and believed, appeared at New Albany, Indiana, and demanded of the New Albany Trust Company that it deliver to him the assets and effects of M. Zier & Co. which it held and had in its possession as Receiver of said Floyd Circuit Court.

The respondent and defendant and the New Albany Trust Company, receiver as aforesaid, believed that the said United States District Court and the Judge thereof were not fully informed of the exact situation and condition of the proceedings in the said Floyd Circuit Court and believed that the said order appointing said Frederic D. Connor receiver of said United States District Court in said bankrupt proceedings was made under a misapprehension of the facts relating to said proceedings and action in the said Floyd Circuit Court, and so believing this defendant and respondent and the said New Albany Trust Company conferred with respect to the demand of the said Frederic D. Connor, Receiver of the said United States District Court that the said property of the said M. Zier & Co. in the hands of said Receiver of said Floyd Circuit Court be turned over to him as Receiver of the said United States District Court, and the result of said conference was that this respondent telephoned to the Judge of the United States District Court for the District of Indiana at Indianapolis, and requested him to direct the said Frederic D. Connor not to proceed further with his demand until this defendant and respondent and the New Albany Trust Company could appear before him and explain to him the exact circumstances and condition of the action of Joseph T. Ryerson & Son against M. Zier & Co., pending in the said Floyd Circuit Court. And the said Judge of the United States District Court stated, or caused

it to be stated over the telephone, that such appearance might be made on the following Monday, to-wit, February 16th, 1903, and did direct the Receiver, Frederic D. Connor, for the time being, to suspend his demand for the possession of said property.

On the 14th day of February, 1903, the said Frederic D. Connor, as said Receiver of the United States District Court, by George H. Hester, as his attorney, appeared in the said Floyd Circuit Court in said action of Joseph T. Ryerson & Son against M. Zier & Co. and filed his verified petition therein, showing his appointment as such Receiver by order of the United States District Court for the District of Indiana and praying said Floyd Circuit Court for an order requiring the said New Albany Trust Company, as Receiver of said M. Zier & Co., to turn over and surrender to him, the said Frederic D. Connor, as Receiver in Bankruptcy the property of the said M. Zier & Co., of which the said New Albany Trust Company, as Receiver of M. Zier & Co. under the orders of the said Floyd Circuit Court was custodian, and thereupon said Frederic D. Connor as such Receiver was made a party to said suit and the matter of said petition was continued until the next term of said Floyd Circuit Court.

The defendant and respondent prepared for the New Albany Trust Company, Receiver of the said Floyd Circuit Court, a petition for advice in which it was stated that Frederic D. Connor had been appointed by the United States District Court in the said bankruptcy proceedings, Receiver for the property and effects of M. Zier & Co., and that the order of appointment directed him to take possession of said property, and stated that in the opinion of the Receiver of the Floyd Circuit Court, namely, the New Albany Trust Company, said order had been made under

some misapprehension, and stated also the fact that the respondent and defendant had telephoned to the Judge of the United States District Court, and that said Judge stated that he would hear the matter on Monday, the 16th day of February, 1903, and requested the said Floyd Circuit Court to authorize the New Albany Trust Company, or its Vice-President, Henry E. Jewett, and this defendant and respondent as its attorney to specially appear in the United States District Court at Indianapolis and make a full and complete explanation of the exact condition of the record in the said action of Joseph T. Ryerson & Son against M. Zier & Co., pending in the said Floyd Circuit Court, and accordingly said petition was filed on the 14th day of February, 1903, and thereupon on said day the said Floyd Circuit Court entered an order among other things authorizing this defendant and respondent and Henry E. Jewett, Vice-President of the New Albany Trust Company to appear before the United States District Court at Indianapolis by way of protestation and specially and present to said Court the exact condition of the said action in the said Floyd Circuit Court. All this was done solely for the purpose of preventing any posisble conflict between the two jurisdictions, and it was believed by this defendant and respondent, and by the said New Albany Trust Company, and by the Judge of the Floyd Circuit Court, that upon such presentation, the United States District Court would rescind its said order appointing said Frederic D. Connor as Receiver and directing him to take possession of said property of M. Zier & Co. Under this authorization, and not otherwise, this defendant and respondent and Henry E. Jewett, Vice-President of the New Albany Trust Company, Receiver of the said Floyd Circuit Court, did appear in the District Court of the United States, for the District of Indiana, at Indianapolis on Monday,

February 16th, 1903, and exhibited to the Court, the said order of the Floyd Circuit Court, authorizing them to appear, and made the said Court a full and complete statement of the condition of the said action of Joseph T. Ryerson & Son against M. Zier & Company in the Floyd Circuit Court.

But so it is that after said explanation and statement had been made and argued by this defendant and respondent, before the Judge of the said United States District Court, which argument and explanation consumed several hours, and continued over from Monday, February 16th, until Tuesday, February 17th, the Judge of the said United States District Court, refused in any way or to any extent to reconsider, modify or set aside his said order appointing Frederic D. Connor, Receiver, and demanded of Henry E. Jewett, as the representative of the New Albany Trust Company, Receiver, to state whether or not he would turn over the property in the hands of the New Albany Trust Company as Receiver aforesaid, to Frederic D. Connor, Receiver, and demanded of this defendant and respondent whether or not he, as counsel for the New Albany Trust Company, Receiver, would advise it to turn over said property to Frederic D. Connor, Receiver. Under these circumstances, and not otherwise, and believing that the said demand of said Judge of the said United States District Court was peremptory, this defendant and respondent, as counsel for the said New Albany Trust Company, stated that he would advise the said New Albany Trust Company to turn over the said property to the said Frederic D. Connor, Receiver.

On the 17th day of February, 1903, this defendant and respondent, and the said Henry E. Jewett, left Indianapolis, and this defendant and respondent was under the impression that it was not necessary to enter any order respecting the proceedings which were had in the United States Dis-

trict Court on the 16th and 17th of February, 1903, with respect to the said explanation and arguments made by this defendant and respondent, and was under the impression that no order would be entered in respect thereto. But this defendant and respondent says that an order was entered, a fact which he learned several days afterwards, which order is as follows:

"This cause coming on now to be heard upon the petition of Frederick D. Connor, filed herein on the 16th day of February, A. D. 1903, for the instructions of the Court concerning the property and assets of said M. Zier & Company, which are now in the possession of the New Albany Trust Company, as Receiver of the Floyd Circuit Court, in a suit therein pending against said M. Zier & Company, because of their insolvency; and the petitioning creditors in this cause and said Connor, Receiver, as aforesaid, being now present and represented by George H. Hester and William Wilhartz, their solicitors, and said New Albany Trust Company, Receiver as aforesaid, being now present and represented by Henry E. Jewett, its Vice President, and by William W. Watts, its solicitor, and after argument by counsel, the said New Albany Trust Company, as Receiver of the Floyd Circuit Court, by its said Vice President, having voluntarily offered and agreed by and with the consent of approval of said William W. Watts, its solicitor, in open Court, to surrender full and immediate possession and control of the property and assets of said M. Zier & Company, in its possession or under its control, as Receiver of the Floyd Circuit Court, to said Connor, as Receiver of this Court, upon the presentation by him to said New Albany Trust Company of a certified copy of the order of his appointment as such Receiver heretofore made by this Court.

"It is now hereby ordered by the Court that said Connor, Receiver as aforesaid, forthwith present a certified copy of the order of his appointment as such Receiver to the said New Albany Trust Company, and immediately thereupon take full possession and

control of the property and assets of said M. Zier & Company, that are now in possession or under control of said New Albany Trust Company as Receiver of the Floyd Circuit Court."

On the 19th day of February, 1903, this defendant and respondent and the New Albany Trust Company, Receiver, appeared before the Judge of said Floyd Circuit Court at New Albany in Chambers, for the purpose of formally reporting to him the result of their appearance before the United States District Court at Indianapolis on the 16th and 17th days of February. This defendant and respondent as attorney for the New Albany Trust Company, then filed before the said Judge of said Floyd Circuit Court a written petition and motion which was signed by him as attorney as follows, to-wit:

"*To the Honorable Judge of the Floyd Circuit Court in Chambers:*

"Respectfully represents the New Albany Trust Company, Receiver herein and W. W. Watts, one of its attorneys herein, that pursuant to the order of the Court herein entered on Saturday February 14, 1903, they on the 16th day of February, 1903, at Indianapolis, Ind., filed before the District Court of the United States for the District of Indiana, A. B. Anderson, Judge, presiding, a statement of the New Albany Trust Co., Receiver, under the order of this Court setting forth the facts by protestation and limited appearance only and showing to said Court the reasons for a modification of its order theretofore entered appointing a receiver granting an injunction and restraining order and directing its Receiver to take possession of the assets of M. Zier & Co.

This Receiver and said attorney say they have made diligent effort to carry out the orders of this Court with respect to those matters, but the order of said Court remains as it was and they now move the Court to strike and expunge from the files herein the petition of this Receiver filed herein on the 14th day of February, 1903, and the order entered thereon."

Upon the aforesaid appearance made by this defendant and said Henry E. Jewett, Vice President of the said New Albany Trust Company on the 16th and 17th days of February, 1903, before the United States District Court at Indianapolis the Judge of said Court seemed to feel that the petition for advice which the said New Albany Trust Company, Receiver by this defendant and respondent as its attorney filed in the Floyd Circuit Court on the 14th day of February, 1903, was in some way offensive to him, the said Judge of the District Court of the United States, and for this reason, this defendant and respondent sought by said petition and statement filed before the Judge of said Floyd Circuit Court to have leave to strike out and expunge the said petition and withdraw it from the files. This defendant and respondent was in every way in good faith endeavoring to carry out the understanding which was had between him and Henry E. Jewett as Vice President of the New Albany Trust Company, receiver, and the Judge of the District Court of the United States for the District of Indiana. This defendant and respondent did advise and continue to advise, and at no time gave any contrary advice that the said New Albany Trust Company, as Receiver of the Floyd Circuit Court should turn over to Frederic D. Connor, Receiver of the United States District Court in such bankrupt proceedings, all of the property, assets and effects of M. Zier & Company, alleged bankrupts, and for this purpose said petition and statement was filed by this defendant and respondent as attorney for the New Albany Trust Company, Receiver, and was signed by him as such attorney on the 19th day of February, 1903, before the Judge of the said Floyd Circuit Court. This defendant and respondent was much embarrassed by the condition of affairs, and felt that the Judge of said Floyd Circuit Court might misconstrue

his action in the premises, and before going to New Albany on the 19th of February, 1903, he sought Mr. David A. Sachs, who is a lawyer residing in Louisville, Ky., and who is a friend of this defendant and respondent and asked him to go to New Albany with him for the purpose of appearing for this defendant and respondent before the Judge of the Floyd Circuit Court and explaining the action of this defendant in agreeing to advise the New Albany Trust Company, Receiver, to turn over the said property to Frederic D. Connor, Receiver. The said Sachs did go with this defendant and respondent to New Albany and was present when the said petition and statement was filed before the Judge of the Circuit Court of Floyd County on that day, and the said Sachs did undertake to explain the situation and to satisfy the said Judge. After filing the said petition and on the same day, to-wit, on the 19th day of February, 1903, the said Judge of the said Floyd Circuit Court made and entered the following order upon said petition and statement, to-wit:

> "And the Judge after considering said statement refuses to concur therein, but orders that the matters and facts therein stated show that said W. W. Watts has been guilty of a contempt of Court, and it is now ordered that a rule be issued against the said W. W. Watts, to appear before the said Judge on the 21st day of February, 1903, at 3 o'clock p. m. and show cause, if any he has, why he should not be punished for contempt."

On the same day, to-wit, February 19th, 1903, the New Albany Trust Company by Henry E. Jewett, Vice President, filed before the Judge of said Floyd Circuit Court its other and separate petition, which is as follows:

> "The New Albany Trust Company, Receiver in the above entitled cause, respectfully shows to the Court

that in pursuance of the order heretofore made by this Court it appeared by limited appearance and protestation only as ordered by this court before Judge A. B. Anderson, of Indianapolis, Judge of the United States District Court for the District of Indiana, on Monday the 16th day of February, 1903, and that upon the hearing in that Court this receiver stated to the Honorable Judge of said United States District Court that it was ready and willing to turn over to the Receiver appointed by the Honorable Federal Court in bankruptcy proceedings, of M. Zier & Company, then pending in said Court the property and assets of said M. Zier & Company in the hands of this Receiver, and this Receiver further states that it has not yet been able to make up its accounts as Receiver as to the receipts and disbursements, but that it is now preparing the same to be submitted to this Court: But that it is ready to turn over to Frederic D. Connor, the Receiver appointed by the United States District Court in bankruptcy all of the property of the said M. Zier & Company; and this receiver now prays for an order of this Court authorizing it to turn over to said Frederic D. Connor, the property and assets of said M. Zier & Company, now in its hands together with any balance in cash which may remain after such statement of its accounts shall be made up and presented and that upon delivering said property to said Frederic D. Connor, Receiver aforesaid, it be discharged from all further liability for or on account of said property or assets of said M. Zier & Company so turned over to such Connor as such receiver.

"This receiver further asks that upon making up and presentation of its accounts for allowances to this Court, that it be allowed to resign as Receiver of the said M. Zier & Company, and that upon the approval of its accounts its said resignation be accepted by this Court, and that it be fully and finally discharged as such Receiver."

"All of which is respectfully submitted.

THE NEW ALBANY TRUST COMPANY,
By Henry E. Jewett,
Vice President.

And afterwards, to-wit, on the same day the Judge of said Court upon said petition and statement made the following order:

"And the Judge after reading said tender of resignation holds that the matters therein set forth show that said Receiver is in contempt of Court, and the Judge orders that a rule issue at once against said Receiver to appear before the undersigned Judge on the 21st day of February, 1903, at 3 o'clock p. m. and show cause, if any it has or can, why it should not be punished for contempt of Court."

And on the 19th day of February, 1903, after the said New Albany Trust Company had filed its petition and statement and offer of resignation, and asked leave to resign, before the Judge of the said Floyd Circuit Court, the said New Albany Trust Company, addressed to Frederic D. Connor, Receiver for the United States District Court, for the District of Indiana, the following letter, to wit:

"FRED. D. CONNOR,

Receiver, U. S. District Court,

District of Indiana.

In view of your demand that as Receiver of the Floyd Circuit Court we deliver you the property of M. Zier and Company, as such receiver will state.

We, this morning, filed before the Judge of the Floyd Circuit Court, in Chambers, report, a copy of which is attached hereto. Thereupon the Judge stated orally that he wanted us to hold the property until our accounts as Receiver were rendered and passed upon. We think this might be done to-morrow, and if you are willing to defer action until then, it will relieve us of embarrassment in the premises.

On the other hand, if you insist on immediate surrender of the property to you, we are bound to say that we believe

that to carry out in good faith the understanding with the Honorable Judge of the United States District Court of Indianapolis and our Vice-President, H. E. Jewett, we ought to surrender the property to you at once.

Very truly yours,
THE NEW ALBANY TRUST COMPANY,
By H. E. Jewett,
Vice-Pres't.

February 19th, 1903."

On the same day and after receipt by said Frederic D. Connor of said communication, he expressed to the New Albany Trust Company, Receiver, his unwillingness to delay the delivery of said property to him, and thereupon on said day the said property was delivered to him by the said New Albany Trust Company, Receiver.

On the following day, namely, February 20th, 1903, this defendant and respondent did appear before the Judge of the said Floyd Circuit Court, because the said Judge had by telephone on the evening before requested his presence, and in pursuance of this request and in obedience thereto, the defendant and respondent appeared. On that day an order was entered removing the New Albany Trust Company as Receiver of the Floyd Circuit Court in the said action, and appointing Charles D. Kelso as Receiver in its stead, and directing the said Kelso as Receiver to demand of the said New Albany Trust Company and of Frederic D. Connor the immediate possession of the property of M. Zier & Company, which came into the hands of said New Albany Trust Company, as Receiver in the action and requiring the said Kelso, Receiver, if the said New Albany Trust Company, or said Frederic D. Connor, should fail or refuse to immediately turn over or surrender possession of said assets and property

to said Kelso, Receiver, to report that fact to the Judge of the Court. Before entering this order, the New Albany Trust Company had actually, under the advice of this defendant and respondent turned over said property to Frederic D. Connor, Receiver of the United States District Court, for the District of Indiana in said Bankrupt proceedings, as above stated. This respondent did not advise, aid, connive at or abet the making or the entry of said order of the Judge of said Floyd Circuit Court removing the New Albany Trust Company, Receiver, and appointing Charles D. Kelso, as Receiver, and had nothing whatsoever to do with it.

On the 20th day of February, 1903, after the entry of said order appointing him Receiver in the stead of the New Albany Trust Company, Charles D. Kelso filed a written report before the Judge of said Floyd Circuit Court in which it was stated that he demanded of the New Albany Trust Company possession of all the property and assets of said M. Zier & Co. which came into its hands as Receiver of said M. Zier & Co. and that said New Albany Trust Company failed and refused to surrender the possession thereof for the reason as stated by it that it had turned over the plant of M. Zier & Co. located on Pearl and Oak Streets in the City of New Albany to Frederic D. Connor, and that as to the other assets of said M. Zier & Co. in its hands it intended to account forthwith to the Honorable Judge of the Floyd Circuit Court.

And afterwards on the same day upon consideration of said report, the Judge of the said Floyd Circuit Court entered an order directing the issuance of a summary writ directed to the Sheriff of Floyd County, requiring the said Sheriff to immediately seize and take into his possession and deliver over to said Charles D. Kelso, Receiver of M.

Zier & Co., all the property of said M. Zier & Co., which said Frederic D. Connor had in his possession, which property was described in said order. This defendant and respondent did not procure the entry of said order or connive at its entry or advise its entry, and did not know of its entry until after it had been entered. He had no connection whatever with it.

This defendant and respondent is informed that upon said last named order a writ was issued by the Clerk of said Floyd Circuit Court and placed in the hands of the Sheriff of said Floyd County, and that the same was executed and the property taken from the possession of Frederic D. Connor and given into the possession of Charles D. Kelso, Receiver. But this defendant and respondent did not advise said writ to be issued or connive at its issuance, and did not know of its issuance until after it had been issued and served. He had no connection whatever with it.

This defendant and respondent further says that after his appearance before the United States District Court at Indianapolis on the 16th and 17th days of February, 1903, all of his acts and doings and advice were with the single purpose of having the New Albany Trust Company at once turn over all of the property and effects of M. Zier & Company to Frederic D. Connor, Receiver of the said United States District Court in said bankrupt proceedings; and he did nothing, and said nothing and advised nothing which would in any way or to any extent obstruct or delay the execution of that purpose. He did nothing and said nothing and advised nothing with reference to the removal of the New Albany Trust Company as Receiver and the appointment of Charles D. Kelso as Receiver. He in no way nor to any extent directly or remotely or contingently did anything or advised anything looking to the retaking of said

property from the hands of said Frederic D. Connor, Receiver, and with reference to all of these things he had nothing whatsoever to do.

This defendant and respondent files herewith as part of this response marked "A" a full and complete copy and transcript of the record of said action of Joseph T. Ryerson & Son vs. M. Zier & Co., pending in the Floyd County Indiana Circuit Court, duly certified under the Act of Congress as the same now remains and appears of record in the office of the Clerk of the said Circuit Court as of date March 4th, 1903.

He also files as part of this his response a complete transcript of the record in the matter of M. Zier & Co., alleged bankrupt, No. 37, in the District Court of the United States, for the District of Indiana at New Albany, Indiana, duly certified by the Clerk of said court as the sa ne appears upon the files and records in said office on the 3rd day of March, 1903, which is marked "B."

And having fully responded and holding himself in readiness to make any further or other response which this Honorable Court may require, he prays that the rule as to him be discharged and the information as to him dismissed.

BERNARD FLEXNER,
DAVID W. FAIRLEIGH,
Counsel for Respondent.

W.W.Watts, on oath says that the statements of the foregoing response are true as he believes.

W. W. WATTS.

Subscribed and sworn to before me by W. W. Watts this 7th day of March, 1903.

NOBLE C. BUTLER,
Clerk.

UNITED STATES OF AMERICA,
District of Indiana. } *ss.*

I, Noble C. Butler, Clerk of the District Court of the United States within and for said District, do hereby certify that the above and foregoing is a full and true copy of the separate response and pleas of William W. Watts, in the case of the United States against Charles D. Kelso and others, filed in my office on the 9th day of March, 1903, as fully as the same appears upon the files now in my custody.

WITNESS my hand and the seal of said Court at Indianapolis in said District, this 11th day of March, 1903.

NOBLE C. BUTLER,
Clerk.

[SEAL.]

And at the same time comes the defendant D. A. Sachs in person and by his attorneys, W. H. H. Miller and William M. Smith, and files his response herein, in the words and figures following, to-wit:

UNITED STATES DISTRICT COURT,
FOR THE DISTRICT OF INDIANA.

In the matter of
M. Zier & Company,
Alleged bankrupt. } No. 37 in Bankruptcy.

United States
vs.
Charles D. Kelso and D. A. Sachs and others.

SEPARATE RESPONSE AND PLEAS OF D. A. SACHS TO THE RULE AND INFORMATION HEREIN.

Your respondent and defendant herein, D. A. Sachs, denies that he committed any act or advised or consented

to the commission of any act in disobedience of any order of the District Court of the United States for the District of Indiana entered or made by said Court in the matter of M. Zier & Company, bankrupts, case No. 37, pending in said Court at New Albany, Indiana, and he deines that he in any way either directly or indirectly, aided, abetted or advised the taking from Frederick D. Connor, the receiver of this Honorable Court in said action stated any property, goods or chattels of M. Zier & Company, bankrupts, or alleged bankrupts, or that he did in any way withhold or aid, abet or advise the withholding of any such property, goods or chattels, or that he in any way disregarded or disobeyed or aided, abetted or advised the disregarding or disobeying the orders or decrees of said Court or that he had been guilty of any contempt in said case.

He says that on February the eighteenth, 1903, he first learned of the bankrupt and State Court proceedings in regard to said matter stated, and that from Honorable W. W. Watts, who represented to respondent that there had some complication arisen as to the jurisdiction of the Floyd Circuit Court and this Honorable Court, and that the Judge of the Floyd Circuit Court was complaining in regard to the action of said Watts in this Honorable Court, and he, Watts, desired this respondent to appear as his friend and attorney in the said Floyd Circuit Court and relieve him if possible of any reflection made upon him by said Court or seeming contempt by reason of his said action in this Honorable Court and that this respondent did appear before said Judge and attempted to explain the matter as far as said Watts was concerned, but that he at no time advised the disobedience or disregard of the orders of this Honorable Court or the taking of said goods, property or chattels, from said Connor nor did he know that the same was in-

tended to be done until after it had been accomplished, but on the contrary, he advised against such course. He says that all he did in this matter was without fee or any consideration whatever except through friendship to said Watts.

He says that at present he is unable to say positively as the same is matter of law as to the correctness of the proceedings herein or the right of this Honorable Court to take the property from the receiver of the Floyd Court as he finds some conflict of authorities in regard to said matter, but he then believed and is still of the opinion and is advised by Counsel and does state that the receiver of the said Floyd Court had the rightful possession of said property and that this Honorable Court did not have the right or authority to interfere therewith in the summary way pursued herein.

But however this matter may be he gave no advice in regard thereto but simply acted as he has stated, advising however, that under the circumstances in this particular case, it was better not to interfere with the property in the hands of said Connor, receiver, and he fully believed that that course would pe pursued until he learned the fact of the taking of said property as stated.

3. This defendant and respondent further states that on the 30th day of December, 1902, Joseph T. Ryerson & Son filed their certain complaint in the Floyd Circuit Court of the State of Indiana against M. Zier & Co., defendant, and on the same day caused to be isused by the Clerk of said Floyd Circuit Court, and there was duly issued by the said Clerk a summons upon the said complaint against M. Zier & Co., which said summons on the same day of its issuance came duly to the hands of the Sheriff of Floyd County, Indiana, and was by him on the same day served on the defendant, M. Zier & Co. The said complaint of Joseph T. Ryer-

son & Son, against M. Zier & Co. so filed in the Floyd Circuit Court averred an indebtedness of $15,000 of the defendant, M. Zier & Co., to the plaintiff, Joseph T. Ryerson & Son, upon certain promissory notes stated in the complaint, and the said complaint prayed judgment in favor of said plaintiffs against said defendant in said sum of money.

The said complaint averred these further facts, that the defendant, M. Zier & Co., is a corporation duly created and organized under the laws of the State of Indiana, and authorized to and was carrying on as such corporation the business of manufacturing boilers in the City of New Albany, in the County of Floyd and State of Indiana; that the said business was a large business; that the said defendant was indebted in the aggregate to divers persons in at least the sum of $65,000; less that it was unable to meet its said obligations; that its creditors were threatening to enter suits against it; that the property and assets of said defendant corporation consisted of a manufacturing plant, which was in opertaion, and which was employed in filling unfinished orders, and working on unfinished contracts; that the defendant was without means or money with which to continue the operation of its said business, and that if suits should be instituted against it, and its property seized upon executions or attachments, the assets and property of the defendant would be dissipated and its plant rendered much less valuable to its creditors generally than if the said property were properly preserved and continued as a going concern; and that the property, funds and profits of the business of the said defendant were in danger of being lost and materially injured and destroyed; unless a receiver were immediately appointed to take charge of said property and hold the custody and possession thereof, and preserve the same for such disposition thereof as the Court might adjudge.

The said Floyd Circuit Court of the State of Indiana and the Judge thereof in vacation were and are by the Statutes and Laws of the State of Indiana authorized and empowered to appoint receivers of and for insolvent corporations and their property and assets; that the said Floyd Circuit Court is a constitutional Court, and the judge thereof a constitutional officer, made such by the Constitution of the State of Indiana, and the said Floyd Circuit Court is by the Constitution and laws of the State of Indiana a Court of general, original jurisdiction.

On the same day on which said complaint was as aforesaid filed in the Floyd Circuit Court, and after it was filed and after the issuance of summons thereon, the plaintiffs in said action of Joseph T. Ryerson & Son, after due notice thereon to the defendant, M. Zier & Co., moved the Hon. William C. Utz, who was and is the duly elected, commissioned, qualified and acting judge of the said Floyd Circuit Court, to appoint a Receiver of the property and assets of the defendant, M. Zier & Co., in pursuance of the prayer of the said complaint.

The said defendant, M. Zier & Co., appeared to said motion and after due consideration thereof, the said Judge sustained said motion, and appointed by his order, duly made and entered, the New Albany Trust Company a Receiver of the said defendant, M. Zier & Co., and of all of its assets and property. The said New Albany Trust Company is a corporation created and organized under the laws of the State of Indiana with full corporate power among other things to act as Receiver under the appointment of Courts. That the said New Albany Trust Company immediately upon its said appointment duly qualified as such Receiver, and then and there took upon itself the duties of said Receivership, and took the oath as required by law and by said order of appointment.

That immediately after its said appointment and qualification as Receiver aforesaid, and on the same day on which it was appointed as such Receiver, and under the order of the said Floyd Circuit Court, the said New Albany Trust Company, as such Receiver, took into its possession all of the said property and assets of the said defendant, M. Zier & Co.

That after its said appointment, the said Receiver, made out an inventory of the property of the said M. Zier & Co., which it had taken possession of under its said appointment as such Receiver on the 30th day of December, 1902, and caused the same to be appraised, which inventory and appraisement were filed in the said Floyd Circuit Court in said action, and said inventory shows, and it is true that the appraised value of said property was about $28,500. That on the 16th day of January, 1903, the said Receiver filed in the Floyd Circuit Court its report and petition wherein it sought the advice and instruction of said Court with respect to the continuance of the operation of said plant and prayed the Court that a time be fixed for the hearing of said report and petition, and further prayed that said M. Zier & Co. and its officers, and the creditors of said M. Zier & Co. be notified by mail and by publication of the time and place of the hearing of said report and petition, and that the said creditors be requested to appear and make known their objections, if any, to the continuance of the operation of the plant of the said M. Zier & Co.

Said petition further prayed that all creditors of M. Zier & Co. be required to prove their claims against said estate by filing proof thereof with the said Receiver, or by intervening petition in said case, and that all creditors and persons be restrained and enjoined from prosecuting suits involving said assets in any manner except by intervening petition in said action.

And thereupon upon consideration of said petition, the Floyd Circuit Court made a certain order on the 16th day of January, 1903, directing said Receiver to continue the operations of the said business of the said M. Zier & Co. and to carry out certain contracts for manufacturing boilers and appliances, which were stated in said order, and further directed that a hearing be had of the creditors of the said M. Zier & Co. on the 24th day of January, 1903.

On the 24th day of January, 1903, the time fixed for the hearing of the said creditors of the said defendant, it was made to appear to the said Court by the said Receiver that all of the creditors of the said M. Zier & Co., as shown by the books of the said M. Zier & Co., had been notified by the said Receiver to be present on said 24th day of January, 1903, to be heard on said matters, and on said day a large majority in number and amounts of the creditors of the said M. Zier & Company appeared in said Court, among whom was the Inland Steel Company, and were heard upon the said petition of said Receiver, and thereby they became and were and are parties to said action; and after said hearing, and the Court being sufficiently advised, the said Court ordered and directed that the said Receiver carry out and complete all unfinished contracts of the said defendant, M. Zier & Co., and the said Court gave to said Receiver power and authority to purchase new material for this purpose, but ordered said Receiver not to make any new contracts, and gave to said Receiver divers other orders and directions, and further ordered that all creditors and other persons be enjoined and restrained from prosecuting any claims or suits against said estate in the hands of said Receiver except by intervening in said cause, or by first obtaining leave of said Court in said action.

The respondent and defendant further states that on the 6th day of February, 1903, the Inland Steel Company, a

creditor who had appeared, and was a party to said action, in said Floyd Circuit Court, and John C. Thurston and John Dey, doing business as the Dey Time Register Company, filed their certain petition in involuntary bankruptcy in the District Court of the United States for the District of Indiana against M. Zier & Co., alleging certain acts of bankruptcy committed by M. Zier & Co., and praying that the said M. Zier & Co. be adjudged a bankrupt. The said petition in bankruptcy further alleged: "That under certain proceedings in a State Court, a Receiver has been appointed of the assets of said corporation, M. Zier & Co., and is attempting to collect assets of said estate and incurring petty expenses in and about said estate which must be borne by the creditors thereof, and your petitioners aver that it is absolutely necessary for the preservation of said estate of M. Zier & Co. for the benefit of all of its creditors that a Receiver in bankruptcy be appointed herein forthwith."

On the 11th day of February, 1903, the said Inland Steel Company filed in said proceedings in bankruptcy its certain petition in which it stated among other things "That at the instance of said Joseph T. Ryerson & Son, a Receiver has been appointed by the Floyd Circuit Court of Floyd County, Indiana, to take charge of the assets of said alleged bankrupt; that the New Albany Trust Company is the Receiver so appointed, and that Harry E. Jewett who is the attorney for said M. Zier & Co. is also the Vice-President of said New Albany Trust Company; that said Receiver is now running the business of M. Zier & Co. and is completing certain contracts and for that purpose has employed a large number of men in the manufacturing establishment of said M. Zier & Company and has placed in charge of said plant one Michael Zier who is the Vice-President and Treasurer of said alleged bankrupt; that said Michael Zier is wholly

incompetent for said business; that he is wholly unfamiliar with book-keeping and necessary office work which is essential to the safe conduct of said business, and your petitioner avers if said Receiver is permitted to remain in charge that it would result to the injury and detriment of such of the general creditors of said M. Zier & Co. who are entitled to participate in said bankrupt estate.

"Your petitioner further states that W. W. and J. R. Watts, attorneys at Louisville, Ky., are the attorneys for said Joseph T. Ryerson & Son in said proceedings wherein the said New Albany Trust Company was appointed Receiver and that said W. W. and J. R. Watts are also attorneys for said Receiver, and your petitioner fears that said Receiver is friendly to said Joseph T. Ryerson & Son and said alleged bankrupt to the detriment of the creditors at large of said alleged bankrupt.

"Your petitioner further alleges that it is absolutely necessary for the preservation of said estate for the benefit of all the creditors who shall be entitled to participate therein that a Receiver in bankruptcy be appointed herein forthwith to take charge of all the assets of said alleged bankrupt and administer the same under the directions of this Honorable Court with the usual powers of Receivers in such cases.

"Wherefore your petitioner prays that a Receiver in bankruptcy be appointed forthwith and that such other and further orders be entered herein as to your Honor shall seem meet and proper."

And upon the same day, to-wit, on the 11th day of February, 1903, the said District Court of the United States for the District of Indiana in said bankrupt proceedings, upon consideration of said petition filed by the Inland Steel Company entered and made an order directing among other things as follows, to-wit:

"It is therefore considered and ordered by the Court that Frederick D. Connor be and he is hereby appointed as Receiver herein of the property of said M. Zier & Co. with authority to take charge and possession of all of the same and particularly the goods, wares and merchandise, books, papers and effects of or belonging to said M. Zier & Co. located at the City of New Albany, Floyd County, Indiana, and now in the hands of the New Albany Trust Company, as Receiver of said M. Zier & Co. appointed by the Floyd Circuit Court of Floyd County, Indiana. Said Receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said City of New Albany, together with all the tools, machinery, appliances, materials and finished products within and about said plant at said City of New Albany, which said plant is located at the corner of Pearl and Oak Streets in said City and all other property of said M. Zier & Comyany wheresoever found and situated.

It is further ordered and adjudged by the Court that the New Albany Trust Company be and it is hereby required to deliver up to said Frederick D. Connor as Receiver all the said property and effects of said M. Zier & Company now in its possession, and to refrain hereafter from interfering in any way with the said Receiver's possession and control of the same."

And Frederic D. Connor duly accepted said appointment as the Receiver of the District Court of the United States for the District of Indiana in said bankruptcy proceedings and duly qualified and executed bond as such as is required in the said order of appointment.

On the 13th day of February, 1903, Frederic D. Connor, as Receiver of the said United States District Court in said bankrupt proceedings, and acting under the order appoint-

ing him as such Receiver, as defendant and respondent was informed and believed, appeared at New Albany, Indiana, and demanded of the New Albany Trust Company that it deliver to him the assets and effects of M. Zier & Co. which it held and had in its possession as Receiver of said Floyd Circuit Court.

On the 14th day of February, 1903, the said Frederic D. Connor, as said Receiver of the United States District Court by George H. Hester, as his Attorney, appeared in the said Floyd Circuit Court in said action of Joseph T. Ryerson & Son against M. Zier & Co. and filed his verified petition therein showing his appointment as such Receiver by order of the United States District Court of the District of Indiana, and praying said Floyd Circuit Court for an order requiring the said New Albany Trust Company, as Receiver of said M. Zier & Co. to turn over and surrender to him, the said Frederic D. Connor, as receiver in Bankruptcy the property of the said M. Zier & Co. of which the said New Albany Trust Company as Receiver of M. Zier & Co. under the orders of the said Floyd Circuit Court was custodian, and thereupon said Frederic D. Connor as such Receiver was made a party to said suit and the matter of said petition was continued until the next term of said Floyd Circuit Court.

This respondent further says that after he was called into this matter, viz: Monday, February 23, 1903, he learned for the first time of the making of the order in this Honorable Court as follows, viz:

"This cause coming on now to be heard upon the petition of Frederick D. Connor, filed herein on the 16th day of February, A. D. 1903, for the instructions of the Court concerning the property and assets of said M. Zier & Company, which are now in the possession of the New Albany Trust Company, as Receiver of the Floyd Circuit Court, in a suit

therein pending against said M. Zier & Company, because of their insolvency; and the petitioning creditors in this cause and said Connor, Receiver as aforesaid, being now present and represented by George H. Hester and William Wilhartz, their Solicitors and said New Albany Trust Company, Receiver as aforesaid, being now present and represented by Henry E. Jewett, its Vice President, and by William W. Watts, its Solicitor, and after argument by counsel, the said New Albany Trust Company, as Receiver of the Floyd Circuit Court, by its said Vice President, having voluntarily offered and agreed by and with the consent and approval of said William W. Watts, it Solicitor, in open Court, to surrender, full and immediate possession and control of the property and assets of said M. Zier & Company, in its possession or under its control, as Receiver of the Floyd Circuit Court, to said Connor, as Receiver of this Court, upon the presentation by him to said New Albany Trust Company of a certified copy of the order of his appointment as such Receiver heretofore made by this Court.

It is now hereby ordered by the Court that said Connor Receiver as aforesaid, forthwith present a certified copy of the order of his appointment as such Receiver to the said New Albany Trust Company, and immediately thereupon the full possession and control of the property and assets of said M. Zier & Company, that are now in possession or under control of said New Albany Trust Company as Receiver of the Floyd Circuit Court.

This respondent further shows to the Court that on the 19th day of February, 1903, W. W. Watts, and the New Albany Trust Company, as affiant is informed and believes appeared before the Honorable Judge of the Circuit Court of the County of Floyd and by report of petition showed to said Court that this Honorable Court was insisting that it

had sole jurisdiction of the affairs of said bankrupt and the right summarily to take possession of all the property in the hands of the Receiver of said Floyd Circuit Court, under the proceedings above referred to, but the said Judge of the Floyd Circuit Court refused to concur in that conclusion and insisted that his jurisdiction was prior and superior to that of this Court and thereupon threatened proceedings for contempt against said Watts and threatened to punish him for alleged actions in violation of the orders of that Court in the premises; that it was solely, as hereinbefore stated, by reason of the complications in which Mr. Watts found himself by reason of the conflicting views of said two Courts; that this respondent had anything to do with said proceedings and he avers that his action in the premises and the only advice and only action that he took was with a view to assisting and extricating Mr. Watts from said complications and with a view to allaying the irritation and avoiding the unpleasant consequences that might result from a conflict in the premises, and with a view to avoiding any action that might be justly construed as a violation of the orders of either Court.

Affiant further says that he prepared no petition or order for the Judge of the Floyd Circuit Court to order said property to be seized; that he did not know that such a petition or order was to be prepared or was prepared until after the said petition or order had been presented and the order made; that said petition was presented or the order was made at night after affiant had gone home to his home in Louisville, as he is informed, and was without his knowledge, cognizance or consent; that he had nothing whatever to do in any way with the procuring or the execution of said order or with the taking of said property or any part thereof from said Connor, Receiver.

And this respondent for the further information of this Court begs leave to refer to a transcript of the proceedings of the Floyd Circuit Court or the Judge thereof, which is filed as Exhibit "A," with the response of the said W. W. Watts in this matter, and prays that the same may be considered as a part of this, his response, solely for the purpose of showing what action was taken in said Floyd Circuit Court, and having fully answered the premises this respondent prays that he be hence discharged with his costs.

D. A. SACHS.

W. H. H. MILLER,
W. M. SMITH,
Attorneys for Sachs.

Subscribed and sworn to before me this 9th day of March, 1903.

NOBLE C. BUTLER,
Clerk.

And thereupon the United States Attorney files his motion to reject and strike out parts of the response of the defendant William W. Watts, which motion is in the words following, to-wit:

(Motion not on file.)

And thereupon the United States Attorney files his reply to each response, which replies are respectively in the words following, to-wit:

Comes now the United States by Joseph B. Kealing, United States Attorney for the District of Indiana and by way of replication to the response of William Watts, denies each and every allegation contained therein except his denials.

JOSEPH B. KEALING,
U. S. Attorney.

Comes now the United States by Joseph B. Kealing, United States Attorney for the District of Indiana and by way of replication to the response of D. A. Sachs, denies each and every allegation contained therein except his denials.

JOSEPH B. KEALING,
U. S. Attorney.

And this cause is now submitted to the court for trial, finding and judgment; and the evidence being partially heard the court doth now adjourn until to-morrow morning.

And afterwards, to-wit, at the November Term of said Court, on the 10th day of March, 1903, before Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney and the defendants William W. Watts and D. A. Sachs in person and by their respective Attorneys come also, and the evidence having been further heard the court doth now adjourn until to-morrow morning.

And afterwards, to-wit, at the November Term of said court, on the 11th day of March, 1903, before Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney, and the defendants William W. Watts and D. A. Sachs in person and by their respective Attorneys come also, and the evidence having been further heard the court doth now adjourn until to-morrow morning.

And afterwards, to-wit, at the November Term of said Court, on the 12th day of March, 1903, before Honorable Albert B. Anderson, Judge of said Court, the following

further proceedings in the above entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney, and the defendants William W. Watts and D. A. Sachs in person and by their respective Attorneys come also, and the evidence having been further heard the court doth now adjourn until to-morrow morning.

And afterwards, to-wit, at the November Term of said court, on the 13th day of March, 1903, before Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney, and the defendants William W. Watts and D. A. Sachs in person and by their respective Attorneys also come, and the evidence and argument of counsel having been heard by the court, the court doth now take the same under advisement.

And afterwards, to-wit, at the November Term of said Court, on the 14th day of March, 1903, before Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney, and the defendants William W. Watts and D. A. Sachs in person and by their respective Attorneys also come, and thereupon the court having considered the evidence and argument of counsel and being sufficiently advised in the premises doth find that said defendants are guilty of the contempt charged.

It is therefore considered by the court that said defendant William W. Watts, for the offence charged be imprisoned and confined in the jail of Marion County, Indiana, for the

term of sixty days, and that he do pay unto the United States the cost of this proceeding, taxed at $ . . . , and that he do stand committed until said costs are paid.

And it is further considered by the court that said defendant D. A. Sachs for the offence charged be imprisoned and confined in the jail of Marion County, Indiana, for the term of sixty days, and that he do pay unto the United States the cost of this proceeding, taxed at $ . . . , and that he do stand committed until said costs are paid.

Upon the rendition of the judgment herein, the following opinion was delivered by the court:

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE DISTRICT OF INDIANA.

Saturday, March 14, 1903.

HONORABLE A. B. ANDERSON, *District Judge*.

UNITED STATES,
vs.
David A. Sachs. } For Contempt of Court.

UNITED STATES,
vs.
William W. Watts. } For Contempt of Court.

ANDERSON, *District Judge*, orally:

Some time prior to the 29th day of December, 1902, a corporation located at New Albany, existing under the name of M. Zier and Company, became insolvent. By a series of fraudulent entries on the books, and by padding the pay rolls, M. Zier, the vice president and one of the largest stockholders of the corporation, had stolen from the funds of that corporation $9,600. About the 29th day of Decem-

ber, 1902, he paid this $9,600. over to one Charles L. Jewett, an attorney at New Albany, who, with his brother, H. E. Jewett, composed the firm of attorneys of Jewett and Jewett, of that city. Of this money $600. was paid over to Charles L. Jewett as attorney's fees, for services to be rendered to the M. Zier and Company corporation in effecting a settlement of some kind with its creditors. The $9,600 was paid over to Charles L. Jewett to be paid by him to the agent of Minnie Zier, a large stockholder in the corporation, and a sister-in-law of M. Zier.

This money was paid to Charles L. Jewett under such circumstances that this court believes that at the time it was paid over to him he knew the manner in which the money was abstracted from the treasury of this company, and knew the fraudulent purpose for which it was handed over to him.

On the 29th of December, 1902, or just a few days before that, Ryerson & Son of Chicago, a creditor of M. Zier and Company, received $3,100. of the funds of this corporation. On the 29th day of December, Charles L. Jewett went to the city of Chicago and took with him this $9,000. It must have been arranged beforehand that the agent of Minnie Zier, Mr. Meargel, who lives at Minneapolis, should meet him in Chicago.

It is indisputable that he paid that $9,000 to Mr. Meargel, in the city of Chicago, on the 29th day of December, 1902. At that time, and for some time prior thereto, Charles L. Jewett had been the attorney and counselor and adviser of M. Zier and Company, and especially of its managing vice president, Mr. M. Zier; knew all about its affairs, and, as attorney and confidential adviser of M. Zier and the corporation, he went to the City of Chicago, at the time he paid this $9,000 to the agent of Minnie Zier, as he himself testifies,

chiefly for the purpose of procuring the corporation, Ryerson and Son, to bring suit against M. Zier and Company in the Floyd Circuit Court, at New Albany, to have a receiver appointed and to wind up its affairs. While in Chicago he made that arrangement with Ryerson and Son. He called up his brother, Henry Jewett, over the long-distance telephone and told him of the arrangement. That night the agent of Ryerson and Son went to Louisville. The next morning Henry Jewett met with Watts and Watts, the attorneys of Ryerson and Son, and it was agreed between them that a suit should be immediately begun in the Floyd Circuit Court, that a receiver should be immediately appointed for all the assets and property of this insolvent corporation, and that the New Albany Trust Company, in which Henry E. Jewett, and Charles L. Jewett were both stockholders, and of which Henry E. Jewett was the vice president, should be the receiver. The suit was commenced on the afternoon of December 30, 1902. Summons was issued. Immediately M. Zier, in pursuance of this arrangement and understanding, with his attorney, Henry Jewett, appeared before the judge of that court, in chambers, and consented to the appointment, or agreed to the appointment of the New Albany Trust Company as receiver of the M. Zier and Company property.

It is said that this was a friendly suit. To the mind of this court it was a fraudulent proceeding. It was collusive. It was born in fraud, and the subsequent transactions down there show that it reeked with fraud from begininng to end. In my judgment that proceeding by which the New Albany Trust Company was made the receiver of M. Zier and Company, an insolvent corporation, was in substance a voluntary assignment in which the insolvent corporation selected the trustee, the purpose and scope of which was the distri-

bution of the assets of this insolvent and subsequently adjudicated bankrupt corporation, among its creditors. On the 16th day of January this receiver filed in the Floyd Circuit Court an inventory, and what has been here called a petition for instructions as how to manage the affairs of the receivership. Creditors, such as appeared to be so on the books of M. Zier and Company, were notified by mail to appear in the Floyd Circuit Court on the 24th day of January, at a creditors' meeting. This creditors' meeting was the most remarkable meeting of the kind that this court has ever heard of. It was held in the court-room, and it is said to have been presided over by the judge. It is claimed by those who were engineering the proceeding, that the purpose of it was to advise with those creditors as to the best methods upon which to administer this trust; and yet the evidence shows conclusively—there is no question about it—that this payment of $9,000 of money which was stolen from the treasury of this corporation was concealed from the creditors; that this payment of $3,100 to Ryerson and Son, just a few days before the beginning of that suit, was concealed from the creditors; and that the payment of $600 to Jewett and Jewett as attorneys' fees was concealed from the creditors.

After the creditors had consulted about the matter to some extent, and after most of them and their representatives had left the court-room, W. W. Watts, one of the defendants, here, drew up an order to be entered by the Floyd Circuit Court. That order was an effort in one sense to bind the creditors who were present at that meeting, but without the knowledge of any other creditor, and without the knowledge of any representative of any other creditor, and, at the procurement of the defendant, W. W. Watts, the court not only authorized the continuance of the business of the

corporation and the completion of certain contracts, but enjoined all creditors from proceeding in any other court or manner, except by intervention in that proceeding in that court. It was declared by Mr. Watts at that meeting that the purpose and object and scope of the proceedings in that court was to wind up the affairs of the M. Zier and Company, and to do this as near in conformity to the bankrupt law as possible.

On the 6th day of February, 1903, three creditors of the M. Zier and Company corporation, representing the necessary amount, the statutory amount of claims, filed a petition in bankruptcy in this court. On the 11th day of February, 1903, these same creditors filed in this court a petition asking this court to appoint a receiver for the alleged bankrupt, M. Zier and Company. As set forth in the petition, matters and facts were shown which at that time appeared to the court to imperatively demand the appointment of a receiver, and the subsequent developments in this case have conclusively shown that if this court had not appointed a receiver at that time, and used every effort to get that property into the possession of the officers of this court, it would have failed to do its duty.

On the 11th day of February, 1903, the court, after due deliberation, appointed as receiver of this court, Frederick D. Connor. He was ordered to take possession of the property of the corporation, M. Zier & Company, which company has since been adjudicated by this court to be bankrupt. The New Albany Trust Company was ordered to refrain from any interference with that property. Mr. Connor went to New Albany, filed a petition in the Floyd Circuit Court on Saturday, February 14th, the last day of the then term of that court, in which petition he set forth a certified copy of his appointment and the orders which were

made in connection therewith, and asked that court to order its receiver to turn the property over to him as receiver of the court. The judge of the Floyd Circuit Court ignored that petition, paid no attention to it whatever, neither granted it nor denied it, but contemptuously continued it to next term, which did not meet until three weeks thereafter. On February 16, 1903, W. W. Watts, the defendant here, having obtained authority, as he claimed from the judge of the Floyd Circuit Court to appear here for that purpose, together with Henry E. Jewett, the vice-president of the New Albany Trust Company, the receiver appointed by that court, appeared in this court They objected that this court had no power to appoint a receiver; that if it had the power to appoint a receiver that it had no power to take possession of the property of the alleged bankrupt by summary proceedings.

I stop here simply to state that the chief argument made by Mr. Watts at that time was that the receiver of the Floyd Circuit Court held by adverse possession. It was maintained upon that argument that this court had no right to take possession of this property out of the receiver of the Floyd Circuit Court because that court's receiver held adversely. Counsel for the defendants here who have argued the law questions before this court upon this hearing have distinctly disavowed this contention. Mr. Miller yesterday squarely stated that there was no question of adverse possession in this case.

After a full discussion of this matter before this court on the 16th and 17th days of February, 1903, Henry E. Jewett, as vice-president of the New Albany Trust Company, and W. W. Watts, Attorney for the New Albany Trust Company, receiver, and the attorney for the plaintiff in that suit—an attorney authorized, as he claimed, by

the judge of that court to represent the matter here—voluntarily, as the records of this court show, in open court, offered to turn this property over to the receiver of the United States Court. Both Mr. Henry Jewett, who is vice-president of the New Albany Trust Company, and a lawyer, and Mr. W. W. Watts, who is a lawyer, at that time conceded as Mr. Miller stated here yesterday, that the absolute right to the possession of this property was in this court. Thereupon these gentlemen, after having conceded, that the right to the possession of this property was in the receiver of this court, after voluntarily offering to turn this property over to the receiver of this court, returned to the city of New Albany.

Two days after, on Thursday morning, February 19th, in pursuance of that voluntary offer, the New Albany Trust Co npany, turned over to Frederick D. Connor, the receiver of this court, the property and plant of this bankrupt corporation. Mr. Connor took peaceable possession of that property as the receiver of this court, entered into possession, remained in possession, caring for it as he was bound under the law to do until Friday night, the 20th day of February, when, after dark, Charles D. Kelso, Ramond G. Morris, Claude Sittason and so ne others went to this plant and forcibly, in the night time, ejected the receiver of this court and took violent and forcible possession of that property. Thereupon the receiver having filed a written statement here of the facts, a citation was issued to these defendants, among others, to show cause why they should not be punished for a contempt of this court in interfering with the peaceable and lawful possession of the property of the bankrupt in the receiver of this court.

It has been argued here as though the question now before the court was whether or not this court has the power

by summary proceedings, or had the power at that time, by summary proceedings, to take the possession of that property away from the receiver of the state court and place it in the hands of the receiver of this court. As I shall show presently, that is not the question here at all. But so much has been said about the law in this case that I propose to now go briefly into that question and show that this court had the power, the unquestioned power, to issue a summary order wresting this property from the receiver of the state court, and placing it into the custody of the receiver of this court.

The constitution of the United States among other things say: "This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." I understand the word "supreme" in that clause to mean supreme—just what it says.

Another clause of this constitution gives Congress the power to enact uniform laws upon the subject of bankruptcy throughout the United States. It is familiar law that whenever Congress exercises any of powers granted to it by the federal constitution, that it occupies the field and that no state can thereafter enter that field. In this instance, Congress has occupied the field. It has passed a uniform law upon the subject of bankruptcy. And, under the constitution, the clause which I have just read, and the authority given to Congress to pass this law, upon these principles alone, it seems to me to be perfectly evident that whatever there may be in the state law or in the state proceedings which is antagonistic to the scope, effect and tenor of the bankrupt law must necessarily fall.

But that has not been left to construction. The courts have frequently passed upon the question. Much has been said about the rulings under the act of 1867. I shall pause here long enough to show what the courts held under that law.

In the National Bankruptcy Register, volume six, page forty-three, is a case decided by Judge Blodgett, formerly of this circuit. It is entitled, In re Merchants' Insurance Co. In this case creditors petitioned to have an insurance company declared a bankrupt. Prior to the filing of the petition, suit had been begun in a state court of Illinois to dissolve that corporation, and a receiver had been appointed in that suit prior to the institution of the proceedings in involuntary bankruptcy; and the question was whether or not the receiver appointed by the United States Court in bankruptcy was entitled to take the possession of the property and administer it notwithstanding the fact it was then in the possession of the receiver of the state court. Judge Blodgett, in the course of his decision, said: "The object and intent of the general bankrupt law is to place the administration of the affairs of insolvent persons and corporations *exclusively* under the jurisdiction of the federal courts of bankruptcy; and the enactment of the general bankruptcy law, now in force, suspended all actions and proceedings under state insolvent laws." In the complaint in the Floyd Circuit Court Ryerson and Son passed their right to the appointment of the receiver upon the sole ground that the corporation was insolvent. In the same case it is further said: "But it is objected that the proceedings in the state court here complained of, being in accordance with a general statute of this state and part of the organic law by which the respondent exists, and being predicated mainly upon the reserved right of the state to protect its citizens against

irresponsible insurance companies, and the state court having acquired jurisdiction of the parties and subject-matter, this court can not now interfere as a bankrupt court to take charge of and administer the assets in question, although the insolvency of the respondent is fully conceded. It seems enough to suggest in answer to this position, that, if correct, any state could effectually defeat the operation of any bankrupt law passed by congress by simply providing that any person or corporation if deemed insolvent or incapable of doing business by a state officer, might, under the power of exercising and enforcing police regulations or enactments by the states be wound up and its assets administered upon in the state courts notwithstanding such person or corporation might be insolvent and guilty of all the acts of bankruptcy provided for in the general bankrupt law."

And in the 11th National Bankruptcy Register in the case of John L. Watson v. The Citizens Saving Bank of South Carolina, in a decision by Judge Bond, it is held (11 N. B. R. 161): "The jurisdiction of the United States courts in bankruptcy is an exclusive jurisdiction, and although State courts have jurisdiction under their statutes to settle and arrange the affairs and distribute the assets of an insolvent corporation their jurisdiction is at an end the moment the corporation is adjudicated a bankrupt by the United States District Court." And in the opinion of the court, it is said: "We are of the opinion that the jurisdiction of the United States courts in bankruptcy is an exclusive jurisdiction. That although the state courts have jurisdiction, under their statutes, to settle and arrange the affairs and distribute the assets of an insolvent corporation, their jurisdiction is at end the moment the corporation is adjudicated a bankrupt by the District Court," "and in this respect we can see no difference between the proceedings of a state court

under a particular statute relating to insolvent corporations, and its proceedings under its general powers as a court of equity to wind up the affairs of an insolvent corporation."

The Federal courts, sitting as courts of bankruptcy, have repeatedly decided this question since the act of 1898 was passed.

In 90 Federal, 475, in the case of In re Gutwillig, decision by Judge Brown, District Judge in the southern district of New York, it is held: "Voluntary general assignments for the benefit of creditors made in conformity with the laws of the State of New York, though said laws are not treated as 'insolvent laws' within the meaning of the last paragraph of the act of 1898, are voidable by the trustee of the debtor in bankruptcy if made within four months of the adjudication, because incompatable with the purpose and policy of the bankrupt law, and the rights of creditors thereunder to the appointment of the trustee and the supervision of the assets of bankruptcy; because in fraud of creditors within section seventy of the act, as the assignment deprives creditors of the important advantages secured to them under the act of 1898; and because if not voidable, the clause of section 3, making such an assignment *ipso facto* 'an act of bankruptcy' would be practically nullified, and rendered of no use to creditors." And in this case the court cites the case which I will call attention to presently.

In the same volume, in the case of In re Bruss-Ritter Co., 90 Fed. 651, decision by Judge Seaman of this circuit, it is decided squarely that the bankruptcy act suspends the operation of state insolvency laws from the time of such enactment, and subject only to such limitations as may be prescribed in the bankruptcy act. The facts of this case are so similar to the case at bar that I want to read a little from this decision: "The petition by five creditors states a *prima*

facia cause within the provisions of the recent act of congress for an adjudication of involuntary bankruptcy against the Bruss-Ritter Company, as an insolvent corporation of Wisconsin. The petition was filed November 4, 1898, and on November 11, 1898, upon petition showing cause therefor, a receiver of the effects of said corporation was appointed by order of this court. The motion to dismiss is founded solely upon the contention that the bankruptcy act of July 1, 1898, having postponed the filing of any petition for involuntary bankruptcy until November 1, 1898, was inoperative in the case at bar, because an action was commenced in the Superior Court of Milwaukee County on October 27, 1898, founded on alleged insolvency and fraud, to take possession of the assets of the corporation for the same purposes involved in the bankruptcy proceedings, pursuant to provisions of the Wisconsin statute, which action was pending when this petition was filed, including an application for the appointment of a receiver. The power of congress to enact a general bankruptcy statute is secured by constitutional provision. In the absence of such congressional enactment, the states are free to provide for insolvency relief of limited extent, but when congress exercises its authority by a general enactment all state action is suspended from such time and subject only to such limitations as may be prescribed in the act. Tua vs. Carriere, 117 U. S. 201-209. As remarked in Platt vs. Archer, 9 Blackf. 559, Fed. cases No. 11213, this authority of congress 'is paramount and exclusive, and so is the jurisdiction of the district court thereunder.'" There is a case where a proceeding such as the one in the case at bar was begun in the state court. A receiver had been appointed by the state court. A receiver was then in possession, and the court held that the moment the petition was filed in bankruptcy, before the adjudication, pending the adjudication,

upon due application, the court on bankruptcy had the right to appoint a receiver and had the right to take the property from the state court. In that case the court further said: "There is no jurisdiction to administer in the state courts causes which are so clearly defined in this act, and no ground for applying the doctrine which prevails where jurisdiction is concurrent giving priority to that which is first obtained."

As I said, this has been repeatedly decided. In the case of In re Rouse, Hazard & Co., 91 Fed. 96, decision by Judge Jenkins, of the circuit court of Appeals, for this circuit, it is said: "The bankrupt act by its terms, went into full force and effect upon its passage, July 1, 1898, and, notwithstanding the provision that no voluntary petition should be filed within one month of the passage of the act, and that no petition for involuntary bankruptcy should be filed within four months of the passage of the act, the bankrupt law was operative from the date of its passage, and was effective from that date to supersede the insolvency laws of the several states. Manufacturing Co. vs. Hamilton (Mass.), 51 N. E. 529; Blake vs. Francis-Valentine Co., 89 Federal 691; In re Bruss-Ritter Co., 90 Fed 651."

In the same volume at page 237, in the case of Lea et al. vs. George M. West Co., the court holds the same doctrine and says: Coming to the consideration of what action should be taken by this court, where the state court has entered upon the administration of the trust estate by reason of the general assignment of the bankrupt, while every reasonable effort should be exerted to avoid even an apparent conflict of jurisdiction between state and federal courts, this case is apparently free from difficulty, as it will not be seriously maintained that the act of bankruptcy itself can be made the basis of dispossessing the bankrupt court of its juris-

diction. The constitution of the United States authorizes Congress, in its wisdom, to enact bankruptcy legislation, and when such action is taken it is the supreme law of the land on the subject. Under the recent act, the district courts of the United States alone are made courts of bankruptcy within the states, and are vested with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings. . . . The power of the bankrupt court in the premises is plenary, and under section 711, Rev. St. U. S., its jurisdiction in bankruptcy cases is superior to, and not concurrent with, the state courts."

In 92 Fed. on page 135, in the case of In re Smith et al. Judge Baker, the former judge of this district, held: That in the case of a voluntary assignment, where, the property was in the hands of the trustee under the deed, it was in *custodia legis*—in the custody of the court, under its control—"the administration of the debtor's estate so assigned is placed under the control and jurisdiction of the proper circuit court of the state." A motion was made in this court for a summary order to require the assignee to turn the property over to the receiver appointed by this court. And the court says: "The assignee under the inoperative state law takes no title, as against the creditors by the deed of assignment; and all of his acts touching the estate of the bankrupt, as well as all acts by the state court in the administration of the same, are unauthorized and void, and will be treated as nullities wherever drawn in question." The distinction was attempted here by one of the defendants while on the witness stand, between the jurisdiction of the person and the property of the bankrupt. He conceded that the Federal Court had jurisdiction of the person of the bankrupt, but claimed that it did not have jurisdiction of

the property. Judge Baker said: "No question of concurrent jurisdiction, or of the conflict of jurisdiction can possibly arise. The jurisdiction of the bankrupt court is supreme, it is exclusvie, and the acts of the state courts are unauthorized and void, because jurisdiction over the person and *estate* of the bankrupt is drawn to, and vested exclusively in, this court by the adjudication of bankruptcy."

In the same volume is the case of In re John A. Etheridge Furniture Company (92 Fed. 329), a case decided by Judge Barr, District Judge, the predecessor of Judge Evans, in the Louisville District. In this case W. W. Watts, one of the defendants here, appeared for the petitioning creditors and procured from Judge Barr a summary order—procured first the appointment of a receiver upon a petition in bankruptcy, and then procured a summary order requiring the assignee, I think it was, in a voluntary assignment proceeding, to forthwith turn that property over to the receiver of the Federal court. And in that decision, procured by this defendant Watts, the court said: "Subsection B of section 71, provides: 'proceedings commenced under said insolvent laws before the passage of this act shall not be affected by it.'" And the court proceeds: "This would clearly indicate that proceedings commenced after the passage of the bankrupt act can not be effectual to prevent the administration of the bankrupt estate in bankruptcy. To allow the bankrupt to select the trustee to administer upon his estate, instead of the creditor's, as provided in the bankrupt act, or to allow the state court to take jurisdiction of the estate of the bankrupt, and administer and distribute it, would effectually destroy the efficiency of any bankrupt act that might be enacted by congress, and thus effectually destroy the power granted to congress to pass a bankrupt act."

In 94 Federal, 633, in the case of *in re* Richard, decision by Judge Purnall, in the Eastern District of North Carolina, it is held:

> "Except as provided in the act, such as section 6, which provides that the passage of the act shall not affect the exemptions allowed where the bankrupt has his domicile, the state law is suspended and inoperative after an adjudication in bankruptcy. The bankrupt court takes jurisdiction *of the estate* and all matters pertaining thereto, and will administer the same to a final settlement."

In the case of Blake, Moffitt, and Towne v. Francis-Valentine Co., 89 Fed. 691, it is said:

> "But where the proceeding are involuntary the debtor is not, and can not be, adjudged a bankrupt until the return and hearing of the order to show cause, and will not then be adjudged a bankrupt if he has any good and sufficient defense."

In re Lady Bryan Ming. Co. (6 N. B. R. 262, Fed. Cas. No. 7980), where a creditor had filed a petition praying that the corporation might be adjudged a bankrupt, and at the same time obtained an injunction similar to the injunction in this case, the Court, upon motion to dismiss the injunction, held that the district court, as a court of bankruptcy, might, in the exercise of a lawful jurisdiction, restrain by injunction the sale of property under an execution issued from a State court before the commencement of proceedings in bankruptcy. In the course of the opinion, the Court said:

> "'Looking at the first section of the bankrupt act, it is difficult to imagine how a more unrestricted jurisdiction over matters in bankruptcy could have been granted. All the assets and all the parties in interest are to be brought before the court, priorities adjusted, liens ascer-

tained and liquidated, and the different funds and assets marshaled and distributed. The grant of these powers carries with it the right to employ such process, mode of procedure, and remedies as are indispensable to make the grant effectual. In this case the real estate levied on is assets and power to collect the assets is given. But this power is of no avail in this proceeding unless the court can preserve the assets until the question of bankruptcy is determined.'"

It was said upon the argument here, I may say, that the cases where summary proceedings have been authorized are cases in which there were voluntary assignments, where the assignment constituted an act of bankruptcy, but that no case can be found where the property was taken from a receiver of a state court. I have already cited several cases, one particularly by Judge Hodgett and one by Judge Seaman, in this circuit. In the case of *in re* Lengert Wagon Co., 110 Fed. 927, the court said:

"Certain judgments were entered against the Lengert Wagon Company in the Supreme Court of the State of New York and thereunder, on the 20th of September, 1901, property of the corporation was levied upon by the Sheriff of New York County under executions issued upon the judgments. Thereafter proceedings were instituted in the State Court by the directors of the corporation for a voluntary dissolution thereof on the ground of the insolvency of the corporation, and a temporary receiver of the property and effects of the corporation was appointed by an order of the court dated the 23d of September, 1901. On the 25th of September, 1901, involuntary proceedings against the corporation were commenced in this court. On the 27th of September, 1901, a receiver of the property of the bankrupt was appointed under section 2 (3) of the bankruptcy act, and an attempt made by him to obtain possession of the property. This was resisted by the receiver and sheriff in the State Court and the receiver in this court now

applies for an order specifically directing those officers to turn the property over to him. The contention on their part is that, as the state court obtained jurisdiction of the matter and possession of the property before the proceedings were instituted in this court, the possession can not be disturbed by process issued from this court; citing In re Chambers 3 Am. Bank R. 537, 98 Fed. 865; Trust Co. v. Bembow, 3 Am. Bank R. 9; 96 Fed. 514. But the proceeding in the State Court is one incident to the insolvency of the corporation, and it seems to be well settled that the bankruptcy gives exclusive jurisdiction to the United States Court in such matters, where proceedings are properly instituted, and ousts the State Courts of all jurisdiction with respect to the possession or distribution of insolvent estates. Tua v. Carriere, 117 U. S. 201; In re Smith, 92 Fed. 135; In re Independent Ins. Co., Fed. Cas. No. 7018; Thornhill v. Bank, Fed. Cas. No. 13992; Griswold v. Pratt, 9 Metc. (Mass.) 16; In re Storm 103, Fed. 618."

In the case of *in re* Storck Lumber Co., 114 Fed. 360, decision by Judge Morris in the eastern district of Maryland, where a proceeding was brought by a stockholder against the corporation alleging its insolvency, a receiver was appointed, and subsequent to the appointment of that receiver in the State court an involuntary proceeding in bankruptcy was commenced in the United States District Court, and the question directly arose as to whether the receiver appointed in the bankrupt proceedings was entitled to take the possession of the property away from the receiver of the State court. The Court held that he was so entitled and said: "The Maryland Statutes for winding up insolvent corporations is in the nature of a proceeding in insolvency." . . . "The National Bankrupt act of 1898 superseded the State insolvent laws, and now, when commercial and manufacturing corporations are so numerous, and are sometimes used, as in this case, more as a cover from individual liability

than for legitimate uses, it can hardly be supposed as the bankrupt act especially provides for proceedings against commercial corporations, that it was intended that such a corporation could commit acts of bankruptcy and escape the provisions of the bankrupt act by applying to be wound up under the State statute, and thus defeat the operation of the bankrupt law." Citing a number of cases. As I have said, the circumstances surrounding the institution and progress of the suit down there at New Albany show that M. Zier, the principal stockholder and Vice-President and Manager of the corporation, selected the receiver, and it was just as much the act of the Bankrupt as if it had made a voluntary assignment and selected the trustee.

Now on this question of summary proceedings, without taking the time to go over it, the Supreme Court of the United States has held as late as the case of White vs. Schloerb, 178 U. S. 542, that the district court sitting as a court of bankruptcy has the power by summary proceedings to take from an officer of a state court property which belongs to the bankrupt estate. It has been decided in several of the cases which have come before the Supreme Court of the United States that that power exists and the only question made in those cases was as to whether or not the possession of the person from whom the property was sought was adverse; and as I have stated here before, when that question was here originally before this court, that was the contention made by the counsel for the receiver in the state court. But it has been decided by the Supreme Court of the United States several times that an assignee in the case of voluntary assignment does not hold adversely. It has been decided that a purchaser who purchases from an assignee under a voluntary assignment does not hold adversely, and that property can be taken from such purchaser

by summary proceedings. It has been held where a petition was brought against a man to put him into involuntary bankruptcy, that his agent, who had received from him cash prior to the institution of bankruptcy proceeding, could be compelled by a summary proceeding to turn that cash over to the trustee.

The Federal Courts, the bankruptcy courts, have in a number of cases in addition to those which I have cited, held that the jurisdiction is exclusive and the power to issue a summary order does exist.

But that is not all. The Supreme Courts of many of the states have gone farther than the Federal Courts. In the case of Lothrop vs. Highland Foundry Company, 128 Mass. 120, in a decision by Judge Gray, who was then chief justice of the Supreme Court of Massachusetts and who was afterwards as you all know an associate justice of the Supreme Court of the United States, who decided the case where property had been sold to a purchaser as I have stated, used this language in speaking upon the question as to whether or not an enactment of a bankrupt law suspended the state law:

> "The omission of the legislature of the commonwealth to make any regulations whatever as to the suspension or revival of the operation of the insolvent laws, by reason of the contemplated or the actual enactment or repeal of the last bankrupt act, can hardly be explained on any other hypothesis than that it was considered to be settled by the judgments of this court, that no such legislation was necessary, either to suspend the operation of the insolvent laws so long as the bankrupt act continued in force, or to revive the operation of all the provisions of the insolvent laws, as if they had never been suspended, so soon as the bankrupt act was repealed: and that the effect, and the only effect, of the bankrupt act upon the insolvent laws was to suspend, so long as it was in force, the *right to institute* proceedings under those laws in cases within its provisions."

The Supreme Court of Massachusetts in a recent case, decided since the present bankrupt law went into force, Parmenter Mfg. Co. v. Hamilton, et al, 51 N. E. 529, goes over this whole question and among other things says:

"The question in this case is whether this act so far superseded the insolvency laws of this commonwealth from the time of its passage as to deprive our courts of jurisdiction to entertain petitions for the commencement of insolvency proceedings filed after July 1, 1898. This depends upon upon the intention of Congress, as manifested by the language above quoted. Of the power of Congress to pass an act having this effect there is no doubt. Constitution of U. S., Art. 1, Sec. 8, Cl. 4; Griswold vs. Pratt, 9 Metc. 16; *in re* Kline, 1 How. 277, 280; Sturgress vs. Crowninshield, 4 Wheat. 122, 192; Ogden vs. Saunders, 12 Wheat. 213, 369. The language is materially different from that of the bankruptcy act of 1867, and from that of the earlier bankruptcy law of 1841. . . . The argument that the change in question was intentional is almost irresistible. The act is 'to go into full force and effect upon its passage;' that is to say, the rights of all persons in the particulars to which this act refers are to be determined by the act from the time of its passage. Among these rights is the right to have insolvent estates settled in bankruptcy, under the provisions of the act, including the rights to have acts of bankruptcy affecting the settlement of estates, determined by it, to have the rights of debtors to file voluntary petitions, and of creditors to file involuntary petitions, determined by it, and to have preferences and liens governed by the provisions of it. These provisions affecting the rights and conduct of debtors and creditors are different from those previously existing in most of the states, and perhaps different from those found in the laws of any state, and they supersede all conflicting provisions. The only limitation upon the full and complete operation of the act upon its passage is that the right to begin proceedings is postponed one month in the case of voluntary petitions and four months in the case of involuntary petitions. Whenever the proceedings are commenced the conduct of the parties after

the passage of the act is to be tested by its requirements. The only saving clause affecting the jurisdiction of State courts, provides for cases commenced in those courts before the passage of the act. The plain implication is that proceedings commenced in the State courts after the passage of the act are unauthorized. This is in accordance with the earlier language giving the statute full force and effect from the time of its passage, except that the filing of petitions is to be postponed for a short time. We are of the opinion that the language was chosen to make clear the purpose of Congress that the new system of bankruptcy should supersede all state laws in regard to insolvency from the date of the passage of the statute."

The Supreme Court of Illinois, in the case of Harbaugh v. Costello, *et al.*, 56 N. E. 363, decided this question the same way. In that case a proceeding was attempted in the state court under the insolvency laws of the State of Illinois, after the passage of the bankruptcy act, when no proceedings had been commenced or attempted to be commenced in bankruptcy; and yet the state court held that it was without power or authority after the passage of the bankrupt act to entertain jurisdiction of such a suit. The court by McGruder, J., say: "It is provided in section 8 of the first article of the constitution of the United States that 'congress shall have power . . . to establish . . . uniform laws on the subject of bankruptcies throughout the United States.' In interpreting this provision of the constitution, it has been held that the power to pass insolvent or bankrupt laws was not thereby taken away from the states until congress itself should exercise the power thereby conferred by the passage of a bankrupt law. When, however, a bankrupt law is passed by congress, any state law upon the subject which may exist is suspended in its operation. As soon as a national bankruptcy act goes into effect, state insolvency laws are suspended and become inoperative, at least so far as they conflict with

the acts of congress upon the subject, and so far as they embrace the same subject matter as is embraced in the act of congress."

And, citing from Black on Bankruptcy, the Court says:

> "The passage of a national bankruptcy law by congress renders it supreme. The state laws in force must yield to it, and can no longer operate upon persons or cases, within the purview of the federal statutes. The latter does not, indeed, repeal or destroy the state laws on the same subject, but it suspends their operation. If the state law and the federal act operate upon the same subject matter, upon the same property, upon the same rights, and upon the same persons, creditors as well as debtors, or may so operate, they can not go together without direct and positive collision, and is such case the federal enactment suspends or supersedes the state law."

In the case at bar, as I have said, there was a deliberate attempt on the part of the Floyd Circuit Court to set up a court of bankruptcy. It is in evidence here that the entire property of this now bankrupt corporation was placed in the hands of the receiver of that court, every asset which it owned. The purpose, object, scope and effect of that proceeding was to wind up that insolvent corporation and distribute its assets among its creditors. In substance and effect it was a bankruptcy proceeding by a court which constituted itself, against the constitution and the laws of United States, a bankruptcy court. Since the issuing of the citation for contempt herein, Kelso, the receiver of the state court, has delivered the plant and property of the bankrupt to the receiver of this court without any order of the state court in the premises, and the receiver of this court is now in possession of the same. If the possession of the receiver of this court was illegal when the property

was wrested from him, it is illegal now. Since the commencement of the trial of these defendants, owing to the startling disclosures made in the evidence here, the fraudulent preference of $9,600 has been returned and paid in money to the receiver of this court.

If counsel for these defendants are right in their contention that the receiver of the state court is entitled to the possession of the plant, we shall then have the property of the bankrupt divided between this court and the state court and each of these courts will distribute a part of the estate between the same creditors and at the same time.

If the exclusive jurisdiction of the bankruptcy court is not upheld or is subordinated to some indefinable rule of comity, which is superior to the law and to the legal rights of parties, such a case of divided jurisdiction may arise at any time.

It has been said that if the amendment of February 5, 1903, had been in force when this State Court receiver was appointed, that then, following the analogy of the voluntary assignment cases, the receiver appointed by this court would have the power summarily to take charge of the property. But it is maintained that the amendment of February 5, 1903, was not in effect, so far as any act of bankruptcy, prior to the time of its passage, is concerned. This amendment took effect on February 5, 1903. On February 6, 1903, these proceedings in involuntary bankruptcy were commenced. Shortly after the original petition was filed, an additional petition, or an additional cause was alleged in a supplemental petition filed under this amendment, reciting the fact that a receiver had been appointed in the State Court at New Albany for M. Zier and Company. The question now is whether or not after the passage of this amendment the appointment of a receiver, or the having suffered a receiver

to be appointed within four months prior to that time, constituted an act of bankruptcy? It has been said that the question here is whether or not that amendment has a retroactive effect. It is well understood that congress has the power to pass retroactive laws if it sees fit. The question then, is, whether or not congress clearly intended the amendment to be retroactive in this respect.

In the original act it was specifically provided that the act should go into force and effect on the first day of July, 1898. It was further provided that no petition for voluntary bankruptcy should be filed within one month, and no petition for involuntary bankruptcy should be filed within four months thereafter. When this amendment was made no such provision was put into it, and the last clause of it, the last section of it, provides:

> "The provisions of this amendatory act shall not apply to bankruptcy cases pending when this act takes effect, but such cases shall be adjudicated and disposed of conformably to the provisions of the said act of July first, eighteen hundred and ninety-eight."

To my mind the fact that in the original act it was provided that no petition for voluntary bankruptcy could be filed within one month of the taking effect of the act, and that no petition for involuntary bankruptcy could be filed within four months of its taking effect, while in the amendatory act there is no postponement of the time, clearly indicates that congress intended its provisions to apply to any act of bankruptcy defined by its terms committed within four months prior thereto. It seems plain that when congress passed this amendment and made no provision for the postponement of its effect, that it intended that it should go into effect immediately.

Not only that, but the wording of the amendment is very suggestive. The original act provides: "Acts of bankruptcy by a person shall consist of his having . . . or (4) made a general assignment for the benefit of his creditors." Now this fourth sub-division is amended as follows: "Or (4) made a general assignment for the benefit of his creditors, or being insolvent applied for a receiver or trustee for his property or because of insolvency, a receiver or trustee *has been*, put in charge of his property under the laws of a state, of a territory, or of the United States." If it was intended that that amendment should have only a prospective effect, why didn't the act say "a receiver or trustee *shall be* put in charge of his property under the laws of a state, of a territory or of the United States?" But it is not necessary for this court to decide this point, and I do not decide it now. If this act took effect from and after its passage in the sense that the appointment of a receiver within four months prior to the filing of the petition in this case, constituted an act of bankruptcy that gave the court jurisdiction, I believe this to be the law, and if it were necessary to decide it in this case, I should so hold until some higher authority declared the law to be otherwise.

But aside from this additional cause setting forth the appointment of the Receiver there were in this petition legal and sufficient causes for an adjudication of bankruptcy alleged; and since the filing of the petition the proper notices have been given, the proper time has elapsed, the alleged bankrupt and those interested in it have suffered a default, and the corporation known as M. Zeir and Company has been adjudged by this court a bankrupt. So the authorities are, I think, plain, that when this court appointed Mr. Connor as Receiver, it had the power to arm that Receiver with sufficient power to take that property from

the Receiver of the State Court. If that is not the law, then a number of judges, including some of the best in the country, have been badly mistaken.

But that is not the question here. These defendants are not charged with resisting any summary order of this court. Why, gentlemen have with so much vehemence and vociferousness argued that question before this court, the court itself can not understand. That is not the question here at all. The facts in this case and the records in this court show that after Frederick D. Conner was appointed Receiver by this Court, the property which was then in the possession of the Receiver of the Floyd Circuit Court, as I have stated, was voluntarily and freely turned over to him as Receiver of the United States Court. For two days he held that possession, and after night, as I have said, certain persons went to that plant and forcibly ejected the Receiver of this Court from that property. The question here is: Was that a contempt of this Court? The men who committed the overt acts on that night have been found guilty of contempt, and a portion of them have suffered their punishment, and the remainder of them are now suffering theirs. The question here is: Whether or not as against the defendants, they not being present at the former trial, they are entitled to have it considered in that way; whether or not the persons who took forcible possession of this property away from the Receiver of this Court were guilty of contempt of this Court; and, in the second place, if such persons were guilty, did these defendants, or either of them, aid, encourage, counsel, command, or assist those persons in doing that unlawful act?

It was stated here yesterday upon the argument that this Court had the undoubted legal right to the possession of this property, but complaint was made of the manner in which it

got the possession. It is the first time that ever the Court has heard that complaint could be legitimately made as to the manner in which a person obtained possession of the property which he was conceded to have the lawful, legal, undoubted and exclusive right to the possession of. That the persons mentioned, with these defendants, in disregard of the process and orders of this court, went after night and with force wrested the property from the receiver of this court, there is no question. But it has been said that there is a certain thing which is above law, and that is comity, so called. It was announced here yesterday as a doctrine of necessity, and it was gravely argued, (I think I put it mildly when I say earnestly argued), that such comity exists between the federal and state courts that it was the duty of the receiver of this court to go into the Floyd Circuit Court, subject himself to the jurisdiction of that court, and humbly ask that court for an order requiring its receiver to turn this property over. It apparently was forgotten that that comity and courtesy was extended to the Floyd Circuit Court; that the receiver of this court went into that court and respectfully petitioned the judge of that court to order his receiver to turn it over, as by law all men must concede he was bound to do. But he not only did not rule upon the petition; he contemptuously ignored it, and as I have said continued it until the next term. After the removal of the receiver of the state court, who turned the property over to the receiver of this court, the Floyd Circuit by a series of forged records appointed Mr. Kelso as receiver. Now counsel who argued the law of this question yesterday spoke frequently about the converse of the propositions that he was arguing. If comity required the receiver of this court, which had exclusive jurisdiction, to go into a state court, which had no jurisdiction, and

humbly ask that court to order its receiver to turn the property over to him, why was not Mr. Kelso, the receiver appointed by that court, in duty bound, in exercising this same generous principle of comity, to come to this court and ask this court to order its receiver to turn the property over to him? He did not do it. He went after night by force and took possession of the property.

Now a great many authorities were cited here yesterday by counsel who argued the law question, in which expressions were used about the orderly procedure in courts. I want to ask who has been guilty of the breach of the orderly procedure? This court in the exercise of its undoubted constitutional and legal authority appointed a Receiver to take possession of this property. In an orderly and regular manner he went before the Floyd Circuit Court and asked that that property be turned over to him. Subsequently it was turned over to him. There was another Receiver appointed by the Floyd Circuit Court, and in defiance of the orderly and regular procedure that has been so much talked about, Mr. Kelso, instead of coming up here, as he ought to have done, if he was in earnest and thought he was right, went after night and pitched the Receiver of this Court out of that plant.

A number of cases were cited here yesterday by counsel who argued the legal questions that were supposed to be involved here, to the effect that in certain cases where State Courts had clear jurisdiction, Federal Courts would not interfere; and with a good deal of emphasis, a certain case decided by Chief Justice Fuller, and reported in 23 Supreme Court Reporter, at page 67, was exploited as the latest decision of the Supreme Court of the United States upon the questions there involved, (Metcalf v. Barker, 187 U. S., —). During this argument I called attention of the

counsel to the case of Clark v. Larrmore, decided by the Supreme Court of the United States. I stop by the way to say that the case of Metcalf v. Barker was decided December 1st, 1902, and this case of Clark v. Larremore, which I have here upon my desk, the opinion being written by Mr. Justice Brewer was handed down on February 23, 1903. The case of Metcalf v. Barker, decided by Mr. Chief Justice Fuller, holds this:—and I stop long enough to call attention of counsel to it: "Judgment creditors of a bankrupt by commencing a judgment creditors' action more than four months before the petition in bankruptcy is filed acquired a lien on the property of the bankrupt, of which they are not deprived by the bankruptcy act of July 1, 1898, section 67 f, because the judgment enforcing the lien is recovered less than four months prior to the filing of such petition, although by that section all judgments obtained against the bankrupt within that period are avoided, as this provision must be regarded as referring only to judgments creating liens, and not to the judgments which enforce an otherwise valid, pre-existing lien." I have not had the time to go through all the cases cited by counsel for the defendants from Peck v. Jenness, in 7th Howard, I believe it is, down to Clark v. Larremore, decided February 23, 1903; but I think I am safe in saying that not one of those cases which apparently sustain the contention of the gentlemen here, differs from this case of Metcalf v. Barker, in this essential particular, namely, that each one of them was a suit to enforce a valid pre-existing lien. This Court does not doubt that a lien existing prior to four months of the filing of a petition in involuntary bankruptcy, the enforcement of which is being attempted in a state court prior to the filing of the petition in bankruptcy can not be disturbed by the summary process of this court. There is no question about

that. But the bare statement of the question shows that it has no application here. And in this decision of Clark vs. Larremore of February 23, 1903, the distinction is squarely drawn between the cases cited to the Court and other cases which might be mentioned. I will call the attention now of the gentlemen to this case. It has been gravely argued here that when once the state court gets jurisdiction of property, that then this court can not disturb its possession without its assent. The case which I hold in my hands arose upon this state of facts; one man procured a judgment against another, had an execution issued, placed it in the hands of the sheriff, and the sheriff levied upon the defendant's land, sold it, and had something like $12,000 of the purchase money in his hands. At that time, after the judgment had been rendered in the state court, after the execution had been issued and levied, after the property had been sold and the money was in the hands of the sheriff, an involuntary petition in bankruptcy was filed against the debtor, and by summary order issued by the bankruptcy Court, the sheriff was ordered to turn the money over to the Trustee.

And the Supreme Court of the United States held that that was proper.

That is what Justice Brewer says:

"The judgment in favor of petitioner against Kenney was not like that in Metcalf v. Barker (187 U. S. ———), one giving effect to a lien theretofore existing, but one which with the levy of an execution issued thereon created the lien." And that is what makes the difference.

So then this court is of the opinion that it had the power when this application for a receiver was made to appoint a receiver; that it had the power by summary process to take the property from the receiver of the state court and place it in the possession of the receiver of this court.

But as I have said, that is not the question here. The court holds that this property having been placed peaceably, quietly and voluntarily by the then custodian of it in the possession of the receiver of the United States court, all persons who thereafter interfered with that possession, knowing the facts, are guilty of a gross contempt of this court.

Considerable has been said about the power of this Court to punish for contempt. Some discussion has been had as to whether or not it is an inherent power, or whether or not it is given by Section 725, of the judiciary act. The question has been raised as to whether that act has conferred the power or is a limitation upon it. This Court does not think it makes a particle of difference which view is correct, especially since it is given the power in the bankrupt law itself. Section 2 of the bankrupt act of 1898, in enumerating the powers of courts of bankruptcy, under subdivision 13, of Section 2, says: "To enforce obedience by bankrupts, officers, and other persons to all lawful orders, by fine or imprisonment, or fine and imprisonment;" so that whatever may be said about the source of the power, it is there sufficiently given in the bankrupt act itself. This Court has no doubt whatever that Kelso, and those with him, who went down on that Friday night and took possession of this property were guilty of a flagrant, a gross contempt of this Court. And they have been punished therefor.

The question now before this Court is, whether or not these defendants or either of them had such connection with that transaction as to make them guilty also? The evidence shows that when W. W. Watts agreed with Mr. Jewett to turn this property over to the Receiver of the United States Court, and left Indianapolis, that he went to Louisville, his home. He himself swears that the nearer he got to Louis-

ville the more he thought he had done wrong in voluntarily offering to turn this property over. He went to his friend Sachs, the other defendant, and procured him to go with him to New Albany the next day for the purpose, as they claim of making peace for Watts with Judge Utz. W. W. Watts, and his brother J. R. Watts, D. A. Sachs, and both his brothers, Morris Sachs and Joseph Sachs, have testified that W. W. Watts is a very busy man with a large practice in Louisville; that D. A. Sachs is a very busy man with a large practice in Louisville. The uncontroverted fact is that both of these gentlemen went to New Albany on Wednesday, the 18th day of February, and spent the entire afternoon there. They spent most of the day Thursday there. They spent most of Friday there. They spent, if I remember the evidence right, most of Saturday there. What were they there for? According to their testimony they were there to appease the wrath of Judge Utz.

So far as the defendant Sachs is concerned the evidence hereby clearly shows that he took an active part in the proceedings which culminated in the removal of the New Albany Trust Company by the Floyd Circuit Court and in the appointment of Mr. Kelso as the receiver of that court: that it was upon a petition sworn to and largely prepared by him that the court acted in the removing of the New Albany Trust Company and in appointing Kelso as receiver; that he was there during the consultation with reference to the matter; that he aided and assisted in planning the line of battle for taking the property from the receiver of this court; that he assisted in the preparation of the processs issued to the sheriff under which the sheriff acted; and this court has no doubt whatever that he was at the plant of M. Zier and Company Saturday afternoon after Kelso was in possession, with Kelso looking over the plant, and making preparations with regard to the running of it.

It has been said here in argument by counsel that there is an irreconcilable conflict in the evidence. It is so stated by counsel on both sides. It has also been stated by counsel that it is not their province to say where the truth lies and who committed perjury. It is the province of the court to say where the truth lies and this court believes that D. A. Sachs in many important and material particulars committed willful and corrupt perjury in this case. The stenographer of Mr. Kelso, who has no interest whatever in this case, swears positively that Mr. Sachs took an active part in the preparation of the instrument which he signed and swore to. She swears positively that he took an active part in the preparation of the papers and proceedings which were immediately used to wrest the possession of this property from the receiver of this Court. Mr. Kelso swears the same thing, and Judge Utz swears the same thing. Kelso swears that Mr. Sachs was with him in the plant looking it over on Saturday, canvassing the situation, and advising with reference to starting the plant and that it was agreed between them that the plant should be started on Monday. Mr. Ruoff, who was the night watchman swears Sachs was there. Another gentleman, a deputy clerk, swears that he met Sachs on the street in New Albany, that evening when Sachs told him he had been out to the plant and he did not think the property was worth $5,000.

That Mr. Sachs has taken the witness stand here and has deliberately sworn that he had nothing to do with the preparation of that answer, that he can not deny that he signed it and swore to it, because it is in evidence in the record, but that he had nothing to do with its preparation, that he had nothing whatever to do with the proceedings which culminated in the wresting of this property from the receiver of this Court; that he was not at the plant that afternoon. So

I say that this Court has concluded that he committed willful and corrupt perjury here.

Another circumstance; Mr. Sachs testified that when he left Judge Utz on Wednesday evening, Judge Utz requested him, who, until that afternoon, was a stranger to him, a resident of Louisville—Mr. Sachs had never transacted any business as I recall the evidence in New Albany prior to that time—that Judge Utz requested him and Watts, both strangers in New Albany, to notify counsel interested in this case, for the creditors to appear in his chambers next morning. Going from Judge Utz's office they went to Jewett's office. It is in evidence here, and there is no dispute about it, that Mr. Jewett called up Mr. Kelso that afternoon over the telephone and asked him how long he would be in his office and told him to wait that some people would be over to see him. There is no question that Watts and Sachs went over to see him that afternoon, and that they were there from a half to three quarters of an hour, and yet Sachs took the witness stand and swore that the only purpose they had in going to Kelso's office that evening was to notify Kelso that Judge wanted to see him in chambers next morning. As has been well said, it is a remarkable circumstance that Judge Utz should call upon these Louisville lawyers, strangers to him, to run errands for him, and it was a remarkable circumstance if the only purpose and object of their visit to Kelso's office that evening was to notify Kelso that Judge Utz wanted to see him the next morning; that he should not have had Henry Jewett tell him when he called him over the telephone that Judge Utz wanted to see him at his office next morning. And it was a remarkable circumstance that they should have gone to Kelso's office, these busy men, who did not want any business this side of the river (they say they have all on the other side they can attend to),

should go to Kelso's office that afternoon and spend from a half to three-quarters of an hour with him. So I find that Mr. Sachs is guilty of a flagrant contempt of this Court.

It is claimed for Mr. Watts that he went to New Albany and did everything he could to turn this property over to the receiver of this court. The evidence shows that Watts was continually declaring and protesting that this property should be turned over. Counsel for Mr. Watts, in the argument in his behalf yesterday afternoon, spoke of the responsibility which this court has, and the power which it has. I trust I fully realize the responsibility which is imposed upon me in this case; I know I take no pleasure in exercising the powers which are incident to my present position. Counsel in that same connection said that Mr. Watts, according to the evidence, had not done one thing or said one word, that no witness had testified to his having done one thing or said one word in furtherance of this wrongful enterprise.

Until Mr. Watts returned to Louisville and procured his friend Sachs to go to New Albany, Mr. Sachs was a stranger to that proceeding. Mr. Watts undoubtedly got Mr. Sachs into the proceeding. He was over there Wednesday. The evidence in the case shows that when Judge Utz finally decided, at whose instance I know not, to cite the New Albany Trust Company before him for contempt, that Mr. Watts respectfully requested that he be cited also. It is in evidence before this Court that before Mr. Watts was served with the citation to appear and answer the charge of contempt in the Floyd Circuit Court, he informed the gentlemen that he was going to a restaurant or saloon, I have forgotten which, where he would be, and to send the Sheriff there to serve him. He was in New Albany, during all the time that these proceedings were planned and he returned to

Louisville with Mr. Sachs late in the evening of Friday, only a short time before the final proceedings were taken to throw the receiver of this court out of the possession of that property.

I understand these gentlemen, in order to be punished must be found guilty beyond a reasonable doubt, but I do not understand that this Court is bound by the denials of Mr. Watts. If the circumstances surrounding this transaction clearly established to this Court's mind beyond a reasonable doubt that notwithstanding Mr. Watts' protestation and declaration as to his intention and desires—that notwithstanding that, if through Mr. Sachs or by assisting Mr. Sachs he had anything whatever to do with the transactions which culminated in this unlawful act, he is guilty and this Court must find it, if the evidence shows it. Mr. Watts, his counsel, asks this Court to believe, throughout those four days, when the evidence in this case shows that he was associating with Judge Utz socially, drinking with him in saloons, hobnobbing with him, in the language of the street, during those four days, was there with his friend Sachs for no other purpose than to appease the wrath of Judge Utz against Watts. It is needless for me to say that this Court does not believe one word of it—not one word of it. I can not believe it. The only solution of his conduct that can be reached consistently with the evidence is this; according to his own testimony, the nearer he got to Louisville, the more he concluded that he had made a mistake in offering to turn the property over. But he had offered. Mr. Watts is one of those lawyers who prides himself on keeping his agreements made in court. I have known many such. Therefore, he did not wish to put himself in the position of openly violating the voluntary promise he had made in this Court. So he procured his friend Sachs to go with him to

New Albany and Sachs is put forward as the active manager of this thing and Watts remains in the background and continually protests that he wants to turn this property over and keep his agreement with the United States Court. He is like some other people. He protests too much. So I have come to the conclusion that Mr. Watts is guilty of a flagrant contempt of this Court.

Up to this time, so far as the law is concerned, my way seems to be clear. If I am mistaken about it, the gentlemen have their remedy. If this Court were infallible there would be no need for the Circuit Court of Appeals and still less need for the Supreme Court of the United States. It is the duty of this Court, in so far as it can, to ascertain what the law is, and, having ascertained what it is, as nearly as possible, to so declare it. I have not had much difficulty in coming to the conclusion that this Court had jurisdiction to do what it has done. I have not had much difficulty in coming to the conclusion that these defendants have been guilty of contempt of this Court. But the question as to what punishment should be meted out to them has given me considerable trouble. It has been a matter of considerable concern to me that at the very beginning of my career here, I have been confronted with this state of affairs. I can not but believe that the gentlemen who have taken part in these proceedings forget that it makes no difference who occupies this bench. The court is the same. My professional experience, has been confined largely to the state courts, and those courts with which I have been familiar were pervaded with an atmosphere of respect and reverence for the dignity and power and purity of the United States Courts. And when it became apparent to the present occupant of this bench that any court, or any officer of any court, or any person

within the district would undertake to do what these gentlemen have done, it was a matter of very great astonishment to me. I was urged to exercise the extreme powers of this court at once. I delayed. When the gentlemen were here before me on the 17th of February, after a full discussion on their part, in which I indulged them far more than they were entitled to, they voluntarily offered to turn this property over, and they did it. And therefore, that such a proceeding as did happen should happen was a matter not only of surprise, but of the utmost consternation, I think, to everybody, as well as to this court. If this court is going to administer justice as it sees it, it necessarily follows that the dignity and the power of the court must be maintained. All men, and lawyers especially, must understand that if they disagree with the court in any order it makes, they must not set themselves up to resist those orders. I have decided in this case—and I dislike exceedingly to do it—but I have decided in this case that my duty compels me to imprison these men. The only question in my mind is as to the term.

Evidence has been introduced as to their previous good standing. I believe both of them realize the mistake they have made and the wrong they have done. If they had come to this court even upon the service of the citation to show cause, and had acknowledged their wrong, it might have been different. They are lawyers; they have here, by their counsel, after a manner which I think is not entirely excusable, criticised the action of this court. They have asserted here, by their counsel, that this court has assumed a jurisdiction it did not have and has issued orders it had no lawful authority to issue. They have, through their counsel urged that, but on the witness stand, as witnesses, they have apparently tried to convey the impression to this court that they

recognized the lawful authority of the court to act—that they recognized it from the beginning. Indeed, Mr. Sachs swears that he himself said, when he heard of the order of February 17th, "That ends it." In other words, while through their counsel, they attack the jurisdiction of this court and loudly proclaim that this court has exceeded its powers and jurisdiction, that the orders which they have violated were no orders at all, and they have a right to violate them, they, on the witness stand, have conceded that the authority was rightfully exercised, and they ask this court to believe that they have done nothing whatever to interfere with it.

The sentence of the court is (and Mr. Sachs and Mr. Watts may stand up) that you are each guilty of a contempt of this court, as charged in the information and in the rule to show cause, and that you stand committed to the jail of Marion County for sixty days and pay the costs taxed against you, and the marshall is charged with the execution of this judgment.

And afterwards, to-wit: on the 14th day of March, 1903, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled matter were had, to-wit:

Come now the defendants William W. Watts and D. A. Sachs and file their Bill of Exceptions in the above entitled matter in the words following, to-wit:

Be it remembered that upon the calling of these proceedings for trial as to the defendants D. A. Sachs and William W. Watts, the said defendants enquired of the Court whether they were required to respond to the rule awarded against them in the above entitled bankruptcy proceedings, or to plead to the above entitled information filed by the United States District Attorney, whereupon the Court ruled and adjudged that the said defendants are re-

quired to respond to said rule and plead to said information con-jointly, and thereupon the said defendants each filed a separate response and plea.

Be it further remembered that upon the trial of said rule and information as to said defendants, the evidence of sundry witnesses was taken on behalf of the United States, and the evidence of sundry witnesses was taken on behalf of said defendants, and each of them, and certain documentary evidence was adduced on behalf of the United States, and also on behalf of said defendants, and each of them, all of which appears in full, together with the objections made thereto by either party and the rulings of the Court thereon and the exceptions thereto in the report of the Official Stenographer of this Court, which said report is here referred to, and filed herewith marked "X," and said evidence adduced and heard was, and is all the evidence adduced, and heard upon the trial.

Said stenographic report is made a part of this bill of exceptions, and is made part of the record.

And this bill of exceptions, being examined and approved by the Judge of this court, is signed by him, and filed, and made part of the record this 14th day of March, A. D. 1903.

ALBERT B. ANDERSON,

Judge.

Exhibit C.

Joseph T. Ryerson & Son
vs.
M. Zier & Co. } No. 5575.

Comes now Frederick D. Connor as receiver by George H. Hester his attorney, and by leave and order of the Court and upon his own motion, makes himself a party to this proceeding, and thereupon by leave of the Court files his verified petition showing his appointment as receiver of said M. Zier & Co. by order of the United States District Court for the District of Indiana and praying this Court for an order requiring the said New Albany Trust Company, as receiver of said M. Zier & Co. to turn over and surrender to him said Frederick D. Connor, as receiver in bankruptcy, the property of said M. Zier & Co. of which the said New Albany Trust Company as receiver of said M. Zier & Co. under the orders of this Court is custodian and the matter of said petition is now continued until the next term of this Court.

IN THE FLOYD CIRCUIT COURT.

JANUARY TERM, 1903.

Jos. T. Ryerson & Son
vs.
M. Zier & Company. }

To the Honorable W. C. Utz, Judge of the Floyd Circuit Court:

Frederick D. Connor, receiver appointed by the United States District Court for the District of Indiana, intervening in the above entitled cause, respectfully shows to the court:

That on the 11th day of February, 1903, by the con-

sideration of the United States District Court for the District of Indiana, upon the petition of the Inland Steel Company, John C. Thurston and John Dey, doing business as Dey Time Register Company, he was appointed by said court as receiver, with authority to take charge of all property of said M. Zier & Company and to hold the same in his custody until the further order of said court; that he has duly qualified as such receiver according to the requirements of the order appointing him, by filing his bond therein to the approval of the Hon. Albert B. Anderson, Judge of said court, and is ready to assume control of the property of said M. Zier & Company as soon as the same is turned over to him by the New Albany Trust Company, heretofore appointed as receiver in this cause by this court; a certified copy of the order of the United States District Court is filed herewith and attached hereto marked exhibit "A."

Your petitioner therefore, respectfully prays that said The New Albany Trust Company be directed and required to immediately turn over to this petitioner all of the property, assets, books, moneys and other effects of said M. Zier & Company now in its possession and control and to immediately file with this court its account in writing, showing the amounts of money collected by it and now on hand. The petitioner further prays that said The New Albany Trust Company be discharged as such receiver herein.

FREDERICK D. CONNOR,
Receiver of M. Zier & Company.

STATE OF INDIANA, }
County of Floyd. } *ss.*

Frederick D. Connor, being duly sworn on his oath says that the matters stated in the foregoing petition are true in substance and in fact as he verily believes.

FREDERICK D. CONNOR.

Subscribed and sworn to before me this 14th day of February, 1903.

CHARLES B. SCOTT,
Clerk F. F. C.
By William F. Ruoff,
Deputy.

INLAND STEEL COMPANY }
vs. } In Bankruptcy.
M. Zier & Company. }

Comes now the Inland Steel Company, petitioner in Bankruptcy herein, which having filed its petition to have M. Zier & Company declared a bankrupt, now files its verified petition alleging that an emergency exists for the immediate appointment by the court of a receiver herein to take charge of the property and effects of said M. Zier & Company pending the hearing of said petition and the appointment of a trustee in bankruptcy herein, which petition reads as follows: (here insert).

And the court being advised after due consideration, finds that the prayer of said petitioner ought to be granted and that a receiver ought to be appointed to take charge of the property and effects of said M. Zier & Company previous to the hearing of said petition and the appointment of a trustee herein.

It is therefore considered and ordered by the court that Frederick D. Connor, be, and he is hereby appointed as receiver herein of the property and effects of said M. Zier & Company, with authority to take charge and possession of all the same and particularly the goods, wares and merchandise, books, papers and effects of or belonging to said M. Zier & Company located at the city of New Albany, Floyd County, Indiana, and now in the hands of The New Albany Trust Company as receiver of said M. Zier & Company appointed by the Floyd Circuit Court, of Floyd County, Indiana. And said receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said city of New Albany, together with all the tools, machinery, appliances, material and finished products within and about said plant at said city of New Albany, which plant is located at the corner of Pearl and Oak streets of said city, and all other property of said M. Zier & Company wheresoever found and situated.

It is further ordered and adjudged by the court that The New Albany Trust Company be, and it is hereby required to deliver up to said Frederick D. Connor as receiver of the said property and effects of said M. Zier & Company now in its possession and to refrain hereafter from interfering in any way with the said receiver's possession and control of the same.

It is further ordered that before entering upon the duties of his said trust herein, the said Frederick D. Connor shall execute to the Clerk of this Court and file with the Clerk of this Court, a bond and sureties to the approval of this court in the sum of ten thousand dollars ($10,000), for the faithful discharge of his duties as such receiver and take the oath required by law of said officers.

February 11, 1903. ALBERT B. ANDERSON,
Judge.

I, Noble C. Butler, Clerk of the United States District Court, for the District of Indiana, hereby certify that the above and foregoing is a true and correct copy of an order made and entered by the United States District Court, for the District of Indiana, on the records of said court, at New Albany, Indiana, on the 11th day of February, 1903, of which records I am the proper custodian.

NOBLE C. BUTLER,
Clerk U. S. District Court.

[SEAL.] By George B. Cardwill,
Deputy Clerk.

UNITED STATES OF AMERICA, }
District of Indiana. } *ss.*

I, Noble C. Butler, Clerk of the District Court of the United States for the District of Indiana, do hereby certify that the above and foregoing is a full, true and complete copy of the petition of Frederick D. Connor, Receiver, etc., produced in evidence in said court in the cause of the United States vs. William W. Watts, D. A. Sachs, et al.

WITNESS my hand and the seal of said court, at Indianapolis in said District, this 12th day of March, A. D. 1903.

NOBLE C. BUTLER,
[SEAL.] *Clerk.*

FILE COPY.

16 Orig.

Office Supreme Court U.
FILED
MAR 23 1903
JAMES H. McKENNEY,
Clerk.

In re Sacks, Pet.r

Exhibits A, B & C filed with Petition.

INDEX.

EXHIBIT A.—*Record Floyd Circuit Court.*

Complaint of Ryerson & Son	1–11
Summons and service	11–12
Order appointing New Albany Trust Company Receiver and directing continuation of business	13–15
Petition for advice and statement	16–21
Petition for advice	21–23
Order	24
Report and petition New Albany Trust Company Receiver, January 16	25–33
Order on report and petition New Albany Trust Company Receiver, January 16	34
Statement New Albany Trust Company Receiver, January 24, and notice to creditors	35–36
Order January 24	37–41
Petition New Albany Trust Company Receiver, February 14, concerning bankruptcy	41–49
Order thereon directing limited appearance	50–53
Order making Conner Receiver in bankruptcy party in Floyd Circuit Court	53
Statement New Albany Trust Company Receiver by Watts, attorney	55
Order ruling Watts for contempt	55
Tender resignation New Albany Trust Company Receiver	56–57
Order ruling Receiver for contempt	57
Petition for removal of New Albany Trust Company	59
Order removal and appointment of Kelso, Receiver	60–61
Petition Kelso, Receiver	62
Order issuing writ to sheriff	63–64
Certificate	64–65

EXHIBIT B—*Record District Court, United States.*

Petition in bankruptcy	66-68
Order subpœna and return	69-70
Petition Inland Steel Company for Receiver	71-73
Order appointing Conner Receiver and directing him to take property	74
Supplemental Petition	75-76
Order February 17 redirecting Conner to take property	77
Petition of Conner, Receiver, of February 21 and Exhibits	78-90
Order on Petition and citation for contempt	90-91
Order on trial for contempt of Kelso	92
Order docketing case in name of United States	92
Separate response and plea of W. W. Watts	93-115
Separate response and plea of D. A. Sachs	116-129
Replies, United States Attorney	129-130
Trial and judgment	131-132
Opinion	132-171
Bill of exceptions	171-172

EXHIBIT C.

Order making Conner, Receiver, party in Floyd Circuit Court and petition	173

INDEX.

	PAGES.
EXHIBIT A.	1–65
EXHIBIT B.	66–172
EXHIBIT C.	173–177

APPENDIX 1.

Exhibit A.

STATE OF INDIANA, }
FLOYD COUNTY, } *Set.*

BE IT REMEMBERED That on the 30th of December, 1902, the following complaint was filed in the office of the Clerk of the Floyd Circuit Court, to-wit:

STATE OF INDIANA, }
FLOYD COUNTY, } *ss.*

IN THE FLOYD CIRCUIT COURT.

JOSEPH T. RYERSON & SON, ... *Plaintiff,*

VS.

M. ZIER & CO., ... *Defendant.*

The plaintiff, Jos. T. Ryerson & Son, complaining of the defendant, M. Zier & Co., for first paragraph of complaint says that the plaintiff, Jos. T. Ryerson & Son is a corporation organized under the laws of the State of Illinois and that said defendant, M. Zier & Co. is a corporation organized

under the laws of the State of Indiana; that heretofore, to-wit: on the 15th day of October, 1901, the said defendant, M. Zier & Co. by its promissory note, a copy of which is filed herewith and made part of this paragraph of comp'aint marked Exhibit "A," promised to pay to the plaintiff Joseph T. Ryerson & Son by name of J. T. Ryerson & Son the sum of $3461.70, sixth days after said date with interest at seven per cent. from and after maturity until paid and attorneys' fees. That said note is due and remains wholly unpaid. Plaintiff further avers that said defendant, M. Zier & Company, is insolvent; that said defendant is indebted in a large amount of money to divers persons and corporations, to-wit, in the sum of $65000.00; that it is unable to meet its said obligation and that its creditors are threatening to enter suits against it; that the property and assets of said defendant corporation consist of a manufacturing plant in the City of New Albany, which is in operation and is now engaged in filling unfinished orders and working on unfinished contracts. That said defendant is now without means or money with which to continue the operation of said business. That if suits are instituted against said defendant and its property seized upon an execution or attachment the assets will be dissipated and the plant of the defendant be rendered of much less value to its creditors generally than if the said property be properly prese ved; that the property fund and profits of the business of said defendant are in danger of being lost and materially injured and destroyed unless a Receiver be immediately appointed to take charge of said property and hold the custody and possession thereof and to preserve the same until plaintiff's cause can be determined and until such further orders shall be made in this proceeding as the Court shall deem proper and necessary.

WHEREFORE plaintiff says that it is necessary that a Receiver be appointed to take charge of the property of

said defendant; that an emergency exists for the immediate appointment of said Receiver by the Judge of this Court, and it prays that said Receiver be appointed at once and that he be invested with such power and authority as the Court shall deem proper under the circumstances.

Said plaintiff for second paragraph of complaint against said defendant says that heretofore, to-wit: on the 15th day of October, 1901, the said defendant M. Zier & Co., by its promissory note, a copy of which is filed wi h and made part of this paragraph of complaint marked Exhibit "B," promised to pay to the plaintiff, Jos. T. Ryerson & Son by name of J. T. Ryerson & Son, the sum of $3470.26, seventy-five days after said date with interest at seven per cent. from and after maturity until paid and attorneys' fees. That said note is due and remains wholly unpaid. Plaintiff further avers that said defendant, M. Zier & Co. is insolvent; that said defendant is indebted in large a amount of money to divers persons and corporations, to-wit: in the sum of $65-000.00; that it is unable to meet said obligations and that its creditors are threatening to enter suits against it; that the prope ty and assets of said defendant corporation consist of a manufacturing plant in the City of New Albany, which is in operation and is now engaged in filling unfinished orders and working on unfinished contracts. That said defendant is now without means or money with which to continue the operation of said business. That if suits are instituted against sa'd defendant and its property seized upon an execution or attachment the assets will be dissipated and the plant of the defendant be rendered of much less value to its creditors generally than if the said property be properly preserved; that the property fund and profits of the business of said defendant are in danger of being lost and materially injured and destroyed unless a Receiver be

immediately appointed to take charge of said property and hold the custody and possession thereof and to preserve the same until plaintiff's cause can be determined and until such further orders shall be made in this proceeding as the Court shall deem proper and necessary.

WHEREFORE plaintiff says that it is necessary that a Receiver be appointed to take charge of the property of said defendant; that an emergency exists for the immediate appointment of said Receiver by the Judge of this Court; and it prays that said Receiver be appointed at once, and that he be invested with such power and authority as the Court shall deem proper under the circumstances.

Said plaintiff for third paragraph of complaint against said defendant says that heretofore, to-wit: on the 24th day of October, 1902, the said defendant M. Zeir & Co. by its promissory note, a copy of which is filed with and made part of this paragraph of complaint marked exhibit "C" promised to pay to the plaintiff, Jos. T. Ryerson & Son by name of Joseph T. Ryerson & Co, the sum of $1043.14 fifteen days after said date with interest at Seven per cent. from and after maturity until paid and attorneys' fees. That said note is due and remains wholly unpaid. Plaintiff further avers that said defendant, M. Zier & Co., is insolvent; that said defendant is indebted in a large amount of money to divers persons and corporations, to-wit: in the sum of $65000.00; that it is unable to meet its said obligations and that its creditors are threatening to enter suits against it; that the property and assets of said defendant corporation consist of a manufacturing plant in the City of New Albany, which is in operation and is now engaged in filling unfinished orders and working on unfinished contracts. That said defendant is now without means or money with which to continue the operation of said business. That if suits are

instituted against said defendant and its property seized upon an execution or attachment the assets will be dissipated and the plant of the defendant be rendered of much less value to its creditors generally than if the said property be properly preserved; that the property fund and profits of the business of said defendant are in danger of being lost and materially injured and destroyed unless a Receiver be immediately appointed to take charge of said property and hold the custody and possession thereof and to preserve the same until plaintiff's cause can be determined and until such further orders shall be made in this proceeding as the Court shall deem proper and necessary.

WHEREFORE plaintiff says that it is necessary that a Receiver be appointed to take charge of the property of said defendant that an emergency exists for the immediate appointment of said Receiver by the Judge of this Court, and it prays that said Receiver be appointed at once, and that he be invested with such power and authority as the Court shall deem proper under the circumstances.

Said plaintiff for fourth paragraph of complaint against said defendant, says that heretofore, to-wit on the 15th day of October, 1901, the said defendant, M. Zier & Co. by its promissory note, a copy of which is filed with and made part of this paragraph of complaint marked Exhibit "D," promised to pay to the plaintiff, Jos. T. Ryerson & Son by name of J. T. Ryerson & Son, the sum of $3478.84, ninety days after said date with interest at Seven per cent. from and after maturity until paid and attorneys' fees. That said note is due and remains wholly unpaid. Plaintiff further avers that said defendant, M. Zier & Company, is insolvent; that it is unable to meet its said obligations and that its creditors are threatening to enter suits against it; that the property and assets of said defendant corporation consist of a

manufacturing plant in the City of New Albany, which is in operation and is now engaged in filling unfinished orders and working on unfinished contracts. That said defendant is now without means or money with which to continue the operation of said business. That if suits are instituted against said defendant and its property seized upon an execution or attachment the assets will be dissipated and the plant of the defendant be rendered of much less value to its creditors generally than if the said property be properly preserved; that the property fund and profits of the business of said defendant are in danger of being lost and materially injured and destroyed unless a Receiver be immediately appointed to take charge of said property and hold the custody and possession thereof and to preserve the same until plaintiff's cause can be determined and until such further orders shall be made in this proceeding as the Court shall deem proper and necessary.

WHEREFORE plaintiff says that it is necessary that a Receiver be appointed to take charge of the property of said defendant; that an emergency exists for the immediate appointment of said Receiver by the Judge of this Court, and it prays that said Receiver be appointed at once, and that he be invested with much power and authority as the Court shall deem proper under the circumstances.

Said plaintiff for fifth paragraph of complaint against said defendant says that heretofore, to-wit: on the 2nd day of December, 1901, the said defendant, M. Zier & Co. by its promissory note, a copy of which is filed with and made part of this paragraph of complaint marked Exhibit "E," promised to pay to the plaintiff, Jos. T. Ryerson & Son by name of J. T. Ryerson & Son, the sum of $3000.00, sixty days after said date with interest at Seven per cent. from and after maturity until paid and attorneys' fees. That

said note is due and remains wholly unpaid. Plaintiff further avers that said defendant, M. Zier & Co., is insolvent; that said defendant is indebted in a large amount of money to divers persons and corporations, to wit: in the sum of $65000.00; that it is unable to meet its said obligations and that its creditors are threatening to enter suits against it; that the property and assets of said defendant corporation consist of a manufacturing plant in the City of New Albany, which is in operation and is now engaged in filling unfinished orders and working on unfinished contracts. That said defendant is now without means or money with which to continue the operation of said business. That if suits are instituted against said defendant and its property seized upon an execution or attachment the assets will be dissipated and the plant of the defendant be rendered of much less value to its creditors generally than if the said property be properly preserved; that the property fund and profits of the business of said defendant are in danger of being lost and materially injured and destroyed unless a Receiver be immediately appointed to take charge of said property and hold the custody and possession thereof and to preserve the same until plaintiff's cause can be determined and until such further orders shall be made in this proceeding as the Court shall deem proper and necessary.

WHEREFORE plaintiff says it is necessary that a Receiver be appointed to take charge of the property of said defendant; that an emergency exists for the immediate appointment of said Receiver by the Judge of this Court, and it prays that said Receiver be appointed at once, and that he be invested with such power and authority as the Court shall deem proper under the circumstances.

WHEREFORE said plaintiff demands judgment against said defendant for the sum of $15000.00 and prays for the

appointment of a Receiver to charge and possession of the property funds and assets of said defendant, and that the Court shall make such orders as shall be necessary and proper for the preservation of said property for the continuance of said business for the purpose of completing unfinished contracts, and such other and further orders as the Court shall deem necessary and proper.

W. W. & J. R. WATTS,

Attorneys for Plaintiffs.

EXHIBIT "A."

Dec. 17th

$3461.70 $3461‡ New Albany, Ind., Oct. 15–1901

Sixty days after date we promise to PAY TO THE ORDER OF J. T. RYERSON & SON THIRTY-FOUR HUNDRED SIXTY-ONE & 70-100 DOLLARS.

NEGOTIABLE AND PAYABLE AT

Copy. NEW ALBANY NATIONAL BANK.

Without any relief whatever from Valuation or Appraisement Law, for value received, with interest at Seven per cent. per annum from and after maturity until paid, and Attorneys Fees. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

No. 828 M. ZIER & CO.

Due Dec. 17. By H. E. Eury,

Charged E. H. *Secy.*

EXHIBIT "B."

Jan. 1st, 1902.

$3470.26 $3470‡ New Albany, Ind., Oct. 15–1901.

Seventy-five days after date we promise to PAY TO THE ORDER OF J. T. RYERSON & SON THIRTY-FOUR HUNDRED SEVENTY & 26-100 DOLLARS.

NEGOTIABLE AND PAYABLE AT THE
NEW ALBANY NATIONAL BANK.

Without any relief whatever from Valuation or Appraisement Law, for value received, with interest at Seven per cent. per annum from and after maturity until paid, and Attorneys Fees. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

No. 829 M. ZIER & CO.

Due Jan. 1, 1902. By H. E. Eury,

Charged Back. *Secy.*

Copy.

EXHIBIT "C."

$1043.14 New Albany, Ind., Oct. 24, 1902.

Fifteen days after date, we promise to PAY TO THE ORDER OF JOSEPH T. RYERSON AND CO. TEN-HUNDRED AND FORTY-THREE 14-100 DOLLARS.

NEGOTIABLE AND PAYABLE AT THE

Copy. NEW ALBANY NATIONAL BANK.

Without any relief whatever from Valuation or Appraisement Law, for value received, with interest at Seven per cent, per annum from and after maturity, until paid, and Attorneys Fees. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

No. 1729. M. Zier & Co.

Due Nov. 11-02. By M. Zier,

Charged Back Dec. 2-02. B. S. *V. Pres. & Treas.*

EXHIBIT "D."

Jan. 16th.

$3478.84 $3478‡ New Albany, Ind., Oct. 15, 1901.

Ninety days after date we promise to PAY TO THE ORDER OF J. T. RYERSON & SON, THIRTY-FOUR HUNDRED SEVENTY-EIGHT & 84-100 DOLLARS.

NEGOTIABLE AND PAYABLE AT THE

Copy. NEW ALBANY NATIONAL BANK.

Without any relief whatever from Valuation or Appraisement Law, for value received, with interest at Seven per cent per annum from and after maturity until paid, and Attorneys Fees. The drawers and endorsers severally waive presentment for payment, protest and notice of protest and non-payment of this note.

No. 830 M. ZIER & Co.

Due Jan. 16, 1902. By H. E. Eury,

Charged Back E. H. *Secy.*

EXHIBIT "E."

$3000.00 $3000‡ New Albany, Ind., Dec. 2-1901.

Sixty days after date we promise to PAY TO THE ORDER OF J. T. RYERSON & SON, THREE-THOUSAND & 00-100 DOLLARS.

NEGOTIABLE AND PAYABLE AT THE
NEW ALBANY NATIONAL BANK.

Copy.

Without any relief whatever from Valuation or Appraisement Law, for value received, with interest at Seven per cent. per annum from and after maturity until paid, and Attorneys Fees. The drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note.

Charged Back E. H.
No. 942
Due Feb. 3, 1902.

M. ZIER & CO.
By M. Zier,
V. Pres. & Treas

Upon which complaint the following summons was issued to-wit:

THE STATE OF INDIANA.

TO THE SHERIFF OF FLOYD COUNTY, GREETING:

We command you to summon

M. ZIER & CO.

if it be found in your bailwick, personally to appear before the Honorable Floyd Circuit Court, on the second day of the next term thereof, to be holden at the Court House in

the City of New Albany, on the Second Monday of January, 1903, then and there to answer the complaint of

JOS. T. RYERSON & SON

and of this writ make due service and return.

Witness CHARLES B. SCOTT, Clerk of said Court, and the Seal thereof hereto affixed at the Court House in New Albany, Indiana, this 30th day of December 1902.

CHARLES B. SCOTT,
Clerk Floyd Circuit Court.

By William F. Ruoff,
Deputy.

[SEAL.]

Came to hand December 30th 1902 at 3 o'clock P. M. Served as commanded on the within named M. Zier & Co. by reading this writ to and in the presence and hearing of Michael Zier, Vice President and Treasurer of the M. Zier & Co., there being no President of the said M. Zier & Co. found in my bailwick. Done in Floyd County, Indiana, this 30th day of December 1902.

LOUIS C. HIPPLE,
S. F. Co.

Fees $1.00.

AND afterwards at Chambers In Vacation of said Floyd Circuit Court on the 30th day of December 1902 before the Hon. William C. Utz Sole Judge among other the following proceedings were had to-wit:—

"FLOYD CIRCUIT COURT,

IN VACATION.

Jos. T. Ryerson & Son;
Plaintiff,
vs.
M. Zier & Co.,
Defendant.
} Order appointing Receiver.

This day came the plaintiff Jos. T. Ryerson & Son, by W. W. & J. R. Watts, attorneys and enter a motion herein to appoint a Receiver herein to take charge of the assets of the defendant corporation and preserve the same under the orders of this Court as shall from time to time be made.

And came the defendant M. Zier and Company by M. Zier its President and by Jewett & Jewett attorneys and entered their appearance to the complaint herein and to the motion for the appointment of a Receiver.

And the parties by counsel having been heard and the pleadings herein being before the Court, and the Court being sufficiently advised it is considered by the Court that said motion shall be sustained and it is now hereby so adjudged and ordered.

It is further ordered and adjudged that The New Albany Trust Company be and it is hereby appointed Receiver of said M. Zier and Company to take charge and possession of all assets of said M. Zier & Company of whatever nature or wheresoever situated and hold and preserve the same subject to the further orders of the Court.

Said Receiver shall report at the next term of Court at as early day as is practicable an Inventory of all the assets coming to his hands and shall then report any recommendations he may have to make with respect to said estate, its conduct and its operation.

Said Receiver shall proceed to collect any moneys or other property due, or to become due to said estate and as

far as may be, shall continue the business of said M. Zier & Company and shall fulfill and complete any contracts now on hand and incompleted and until the further order of the Court shall continue the operation of said business as nearly as may be, as a going concern with power to employ such reasonable amount of help therein as may be necessary and to employ counsel to advise with and assist him in the conduct of its trust.

Said receiver is further authorized to make purchases of any necessary materials or any material or other goods necessary in the conduct of said business not to exceed in all, without further order of Court the total sum of $2500.00.

Said Receiver shall insure the property in this estate in such sum as said Receiver deems reasonable not however to exceed the sum of $10000.00. Said Receiver is further authorized and empowered to purchase such indemnity insurance against accident to employees as said Receiver may deem nesessary.

Before entering upon the duties of said Receivership, said Receiver shall, as required by law, take the oath of office for the faithful discharge of the duties of said Receivership and obedience to the orders of this Court, or the Judge thereof. Whereupon came the New Albany Trust Co., the Receiver herein and took the oath of office as required by law and accepted said trust.

Said Receiver is further authorized and empowered to sue and defend in its own name as Receiver any suits necessary to be prosecuted or defended for the protection or enforcement of the trust herein.

And power and jurisdiction is hereby reserved to enlarge, amend or restrict the duties and powers of said Receiver from time to time as may be deemed necessary.

December 30th, 1902. WILLIAM C. UTZ,

Judge."

AND afterwards In Vacation, at Chamber of said Floyd Circuit Court on the said 30th day of December, 1902, before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:—

Joseph T. Ryerson & Son,
vs.
M. Zier & Co. } In Vacation.

Come now the New Albany Trust Company and files in the office of the Clerk of Floyd County Court its acceptance in writing as receiver together with the oath required by the appointment herein endorsed thereon, which reads as follows:

"STATE OF INDIANA,
County of Floyd. } *ss.*

I, Fred Sauer, Secretary of the New Albany Trust Company, for and on behalf of said Company, do hereby accept the appointment of Receiver in the cause now pending in the Floyd Circuit Court, wherein the Joseph T. Ryerson & Son is plaintiff and the M. Zier & Co. is defendant, and do hereby solemnly swear that The New Albany Trust Company as such Receiver will faithfully and honestly discharge the duties of said receivership in obedience to the orders of the Floyd Circuit Court and of the Judge thereof.

FRED SAUER.

Subscribed and sworn to before me, this 30th day of December 1902

CHARLES B. SCOTT,
Clerk F. C. C.
By William F. Rouff,
Deputy."

AND afterwards, In Vacation, At Chambers of the Floyd Circuit Court on the 3rd day of January 1903, before the Hon.

William C. Utz, Sole Judge among other the following proceedings were had to-wit:—

Joseph T. Ryerson and Son,
vs.
M. Zier & Co. } In Vacation.

Comes now the New Albany Trust Company, receiver in the above matter, and presents to the Judge of the Floyd Circuit Court, in Chambers its verified petition, which is in words and figures following:—

IN THE FLOYD CIRCUIT COURT.

"STATE OF INDIANA,
County of Floyd. } ss.

Jos. T. Ryerson and Son,
vs.
M. Zier & Company.

The New Albany Trust Company, receiver in the above entitled cause, respectfully reports to the Court that at the time of the appointment of this receiver, said M. Zier and Company was indebted to workmen, being machinists, boilermakers and other persons engaged in manual and physical labor in and about the plant of said concern for three days to-wit:— December 27, 29 and 30th that an itemized statement of such indebtedness if filed with and made part of this petition and referred to as Exhibit "A" that said M. Zier & Co. being a corporation and being insolvent at the time of the appointment of this Receiver; that this receiver believes that said amount due for wages is a preferred claim against the assets in its hands; that said sums except two items hereinafter referred to are due to mechanics and

laborers who are dependent upon their daily labor and wages for their support, and it would be a hardship for said persons to be compelled to file their claims individually and await the settlement of the estate for their payment; that to file said claims separately would involve not only delay but would increase the expense of the Administration of the trust, and that this Receiver is willing to advance sufficient money on account of said trust to pay said labor claim if the Court shall so direct and order them to be paid by the Receiver as preferred claims against the assets in its hands.

That the only two items in said statement attached hereto, which are regarded as being doubtful, preference and priority, are the three days of M. Zier, who is the Vice-President of said Company, amounting to $16.00 and three days for J. E. Eury who was the Secretary of said Company amounting to $15.00.

This Receiver therefore asks the direction an order of the Court in the matter.

Respectfully submitted,
THE NEW ALBANY TRUST COMPANY,
By Fred Sauer.

Fred Sauer, being shown on his oath says that he is the Secretary of the New Albany Trust Company and makes this affidavit on behalf of said Company; that the statements contained in the foregoing petition are true in substance and fact as he verily believes.

FRED SAUER.

Subscribed and sworn to before me this 3rd day of January 1903.

ELIZA A. TABLER,
[SEAL.] *Notary Public.*

My Commission expires Oct. 7, 1906.

EXHIBIT "A"

PAY ROLL FOR M. ZIER & CO.

Beginning Dec. 27th ending 30th, 1902.

NAME.	HOURS.	RATE.	AMOUNT.
Allard	27	.19	$5.13
Armstrong	27	.15	4.05
Atkins, C	27	.12½	3.37
Atkins, W. A	13	.12½	1.62
Boersig, Geo	27	.24	6.48
Boersig, Ed	27	.05	1.35
Bruder, Harry	28	.16	4.48
Bruder, O.	54	.14	7.56
Buckingham	27	.25	6.75
Bryant, Joe	27	.11	2.97
Bryant, John	27	.13½	3.65
Bybee	27	.12½	3.37
Cleceland	27	"	3.37
Carpenter	18	.06	1.08
Dixon, C.	27	.08	2.16
Duvall, Joe.	27	.17½	4.75
Duvall, Jim	27	.12½	3.37
Dunn.	27	"	3.37
Cookingdoffer	27	.05	1.35
Elliott.	27	.05	1.35
Embry	49	.22½	11.03
Frederick	27	.15	4.05
Guthrie.	18	.20	3.60
Gray	27	.15	4.05
Hopkins	27	.12½	3.37
Higgins.	29	"	3.63
Hammer.	20	"	2.50
Long, Sr	27	.20	5.40

NAME.	HOURS.	RATE.	AMOUNT.
Long, H	27	.10	2.70
Long, R	31	.24	7.44
Lines	27	.27½	7.43
Maupin	9	.12½	1.13
Miller, W. H	27	.27½	7.43
Miller, John	37	.12½	4.63
McKenna	27	.25	6.75
Monical	27	.15	4.05
McIntyre	27	.06	1.62
Stone, L	27	.22	5.94
Stone, Ed	27	.15	4.05
Sinkhorn	27	.12½	3.37
Schmitt	30	.17½	5.25
Story, Lewis	27	.12½	3.37
Schlageter	19	"	2.38
Sarles	27	.05	1.35
Schuler	27½	.12½	3.43
Scales, Joe	27	.07½	2.03
Veron, Joe	27	.17½	4.73
Van Winkle	27	.22½	6.08
Vernia	28	.12½	3.50
Widman, Jr	18	.07	1.26
Widman, Sr	27	.25	6.75
Weidman	27	.11	2.97
Welz, Geo	47	.06	2.82
Wells, C	27	.06	1.62
Ward	27	.12½	3.37
Wehner	30	.06	1.80
Young	45	.25	11.25
Raglon	27	.17½	4.73
Baugh	9	.10	.90
Brazil	27	.22½	6.08

NAME.	HOURS.	RATE.	AMOUNT.
Foust	14	.23	3.22
Dixon	40	.12½	5.00
Woodfill	31	.13½	4.19
Beard	5	.10	.50
Davison	27	.17½	4.73
Duvall, Bwn	27	.22½	6.08
Sarles	19½		1.33
Leaf	14	.12½	1.75
Fogle	18	.10	1.80
Austin	18	.12½	2.25
Walters	20	.17½	3.50
Normally, M	20	.14	2.80
Normally, Jim	20	.17½	3.50
Hughes, Jim	20	.14	2.80
Slattery	20	.23	4.60
Moore	14	.15	2.10
Buckingham, Cin. Job, 73 hrs. time 25c per hour		$18.75	
Drew from office		9.45	
			8.80
Foust, Geo., McHenry Job, 440 hrs. time 23c per hour		$101.20	
Drew from office		68.83	32.37
Zier, M., 3 days			19.00
Eury, H. E., "			15.00
Eury, J. G., "			6.00
Zier, L. M., "			2.00
Zier, Ed., "			1.00
TOTAL			$372.72

And the Court being satisfied it will be to the interest of said trust to pay the persons named in the pay roll attached to said petition the several amounts due them for wages for

labor performed for such insolvent corporation for the three days immediately preceeding the appointment of said Receiver for manual labor performed by said employees, it is now therefore ordered by the Judge of said Court that the said New Albany Trust Company as Receiver of the M. Zier and Company pay to the persons named in the pay-roll attached to the petition herein, the several amounts due them (except to M. Zier and H. E. Eury officers of said Company) the aggregate amount to be paid under this order being the sum of $341.72 and that upon making such payment said Receiver shall be subrogated to the performance and lien claimed and held by said laborers, mechanics and machinists for their said several claims as preferred creditors, and shall be allowed credit therefor in its accounts as and for the payment of a preferred claim.

Dated this 3rd day of January, 1903.

WILLIAM C. UTZ,
Judge Floyd C. C.

And afterwards in vacation of said Floyd Circuit Court on the 9th day of January, 1903, the following petition was filed to-wit:—

FLOYD CIRCUIT COURT.

STATE OF INDIANA, }
County of Floyd. }

Joseph T. Ryerson & Son,
Plaintiff.
vs.
M. Zier & Company,
Defendants.

PETITION OF RECEIVER FOR INSTRUCTIONS AS TO CONTRACT WITH ANGUILLA COTTON OIL COMPANY.

Comes the New Albany Trust Company, Receiver of M. Zier & Company, under order of this Court in the above

styled cause, and for its report and petition of its action thereon, it submits to the Court the following facts concerning a contract between M. Zier & Company and the Anguilla Cotton Oil Company, and asks the instructions of this Court, to-wit:—

That heretofore a contract was entered into between M. Zier & Company and the Anguilla Cotton Oil Company whereby it was agreed that for the sum of $3245.00, said M. Zier & Company should construct and set up for the said Anguilla Company at its plant in the State of Mississippi, ten certain specified tanks, made of iron, for which the said Zier Company was to receive, upon the satisfactory setting up of said tanks, the total sum of $3245.00; that in pursuance of said contract, the said Anguilla Company, advanced and paid to the said Zier Company the total sum of $1,081.67, and the same has been credited on the books of the said Zier Company to the account of the said Anguilla Company; that since the appointment of the receiver herein, the said Anguilla Company has made demand of the receiver that it fulfill the contract of the said Zier Company, but because of the complications of the receivership with respect to the payment of the said money theretofore to the said Zier Company, and because of the large expense which will be necessary in the payment of freight and the setting up of said tanks in Mississippi, this petitioner has been in doubt as to what it should do; that after consultation with the representatives of the Anguilla Company and the said M. Zier Company, it has finally agreed upon the settlement of the matter upon the following conditions, to-wit:—

There are eight of said tanks of a certain size which are now ready for shipment. There are two additional tanks of a larger size yet to be built. The cost and expense of shipment and setting up of all of said tanks would range

from $850.00 to $1100.00, as estimated by said Zier Company and the said Anguilla Company, shall receive at New Albany on board the cars, eight tanks now ready for shipment and the two tanks hereafter to be completed. That from said $3245.00, the original contract price, there shall be deducted the sum of $850.00, as an allowance to said Anguilla Company, for the payment of freight and setting up of said tanks in said State of Mississippi, so that when the matter is finally disposed of said Anguilla Company shall have credit for said sum of $850.00 and said $1081.67 already paid, or a total of $1931.67, and will pay this petitioner the sum of $1313.33. Said $1313.33 is to be paid to this petitioner, as stated, upon delivery of said tanks to said cars at New Albany, and the same shall be paid in such installments as the tanks shipped respectively bear to the total amount to be paid; that is to say that upon the shipment of the eight tanks, said Anguilla Company shall pay the proportionate value thereof out of $1313.33, to wit: $843.87, and upon the shipment of the other two tanks the remainder thereof shall be paid.

Your petitioner would further show to the Court that it believes this settlement of the matter is for the best interests of the estate. That the metal making up said tanks has been cut for special sizes under the terms of the contract, and that unless this plan of settlement is carried out, great loss will result to the estate herein, and it now recommends that it be instructed and ordered to carry out the settlement as agreed upon as stated; that said agreement has been made subject to the approval and ratification of the Court.

WHEREFORE Your petitioner prays that it have an order accordingly, and for all further and other proper relief.

W. W. & J. R. WATTS,

Attorneys for New Albany Trust Company, Receiver.

Fred Sauer says he is the Secretary of the New Albany Trust Company, Receiver of M. Zeir & Company, and that he has active charge of the management of the Receivership of M. Zier & Company, and is fully acquainted with the facts stated in the foregoing petition, and that the facts there stated are true.

FRED SAUER.

Subscribed and sworn to by Fred Sauer before me this 9th day of Jan'y, 1903.

CHARLES B. SCOTT,
Clerk F. C. C.

(Filed Jan. 9, 1903. CHARLES B. SCOTT, *Clerk F. C. C.*)

AND upon the filing of the foregoing petition, In Vacation at Chamber of said Floyd Circuit Court on the said 9th day of January, 1903 before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to wit:—

FLOYD CIRCUIT COURT,
IN VACATION.

STATE OF INDIANA,
County of Floyd.

Joseph T. Ryerson & Son,
Plaintiff.
M. Zier & Company,
Defendant.
} Order.

This day came New Albany Trust Company, receiver of M. Zier & Company by W. W. and J. R. Watts its attorneys, and files its petition herein seeking the advice and instruction of the Court concerning the disposition of the contract between M. Zier & Company and the Anguilla Cotton Oil Company and certain tanks made thereunder and the Court being fully advised and it appearing to be

for the best interests of the estate herein, it is now hereby ordered that the Receiver herein shall deliver to the Anguilla Cotton Oil Company on the cars at New Albany, Indiana the ten tanks contracted for under said contract, at such times as the same may be completed by the Receiver herein and upon the payment of $1313.33 to said Receiver. And it appears to the Court that eight of said tanks are now completed, the same shall be immediately delivered to said cars upon the payment to the said Receiver of so much of said cash as the value of said tanks under said contract bear to the whole of said sum of $1313.33 to-wit:—$843.87 and that when said other two tanks are completed they shall be delivered to said cars upon the payment to said Receiver of the balance of said total sum of $1313.33 to-wit: $469.46 then remaining unpaid.

January 9th, 1903. WILLIAM C. UTZ,
Judge."

And afterwards at the January Term, 1903 of said Floyd Circuit Court on the 16th day of January, 1903, the Honorable William C. Utz, presiding, the following Report and Petition was filed in open Court, to-wit:—

FLOYD CIRCUIT COURT.

Joseph T. Ryerson & Son, *Plaintiff.*
vs.
M. Zier & Company, *Defendant.*

REPORT AND PETITION OF NEW ALBANY TRUST CO., RECEIVER.

Comes the New Albany Trust Company, Receiver herein and files this its report and petition herein, to-wit:

I.

Immediately upon it appointment and qualification herein, it took possession of the office and plant of M. Zier & Company in New Albany, and found therein a lot of office furniture and fixtures, a lot of machinery and tools, a lot of merchandise or material, the books of account of M. Zier & Company, and the accounts therein. It then proceeded with an inventory of the property coming to its hands with an appraisement thereof by Wm. M. Mix and S. J. Gardner, residents and householders of the City of New Albany, who were sworn to return a true, just and correct valuation of all the property, credits, rights and demands of the said M. Zier & Company, as exhibited by and coming to the hands of this Receiver. The petitioner now files herewith as a part hereof said inventory and appraisement and shows the following summary of the items therein contained, to-wit:—

Value of machinery, tools, etc	$ 6,410.50
Value of merchandise or material	8,572.77
Value of office furniture and fixtures	188.00
Value of accounts owing M. Zier & Co. considered good and collectable	9,286.37
Value of accounts owing to M. Zier & Co. doubtful of collection	3,877.17
Value of lease hold	100.00
TOTAL	$28,434.81

As a part of the assets of this estate considered by the appraiser, but not included in above, there are a number of contracts between M. Zier & Company and other persons wherein the said M. Zier & Company have heretofore agreed to supply certain material and labor for certain sums of

money specified, and petitioner, now, refers to that part of said inventory marked "Estimated Value of Unfinished Contracts," wherein these matters are set forth. Some of said contracts were partially filled, but there is yet more labor and material to be furnished on them before all of the money consideration therefor shall be paid by the debtors. On some other of said contracts, none of the material has been delivered though some labor has been performed in making up the material, and other labor and said material is yet to be furnished by said M. Zeir & Company before the consideration thereof shall be paid. On others of said contracts said M. Zier & Company have heretofore received substantial sums of money advanced on account thereof, and this Receiver is in some doubt as to what he shall do with respect to the fulfillment of such contracts, to-wit:

First.—There is a contract with Grainger & Company of the City of Louisville, Kentucky, for the erection of two cold storage tanks. Granger & Company are to pay the total sum of $860.00 therefor on completion thereof. The Material has been delivered to Grainger & Company's premises for the purpose of completing said contract, and there is yet about the sum of $200.00 of labor &c to be put upon said work to complete same. It appears now that said Grainger & Company will set off against the money consideration moving from them on said contract. With respect to this contract, the Receiver is going ahead with its completion, and for the purpose of having paid to it such money as is the difference between the amount of said advancement and the total sum Grainger & Company agreed to pay.

Second.—J. E. & F. Walter agreed to pay M. Zier & Company $1,750.00 for two 66 inch boilers and attachments as specified in the agreement. Said boilers and attachments are now in the course of building, but it will require the

expenditure of about $500.00 more than has already been spent to put them in a state of completion whereupon the balance of the money coming from J. E. & F. Walter may be paid. But it appears that the said Walters have advanced to the said M. Zier & Company the sum of $1,000 on said contract, and, inasmuch, as nothing on said contract has been delivered to the said Walters, this petitioner is advised that the said Walters stand in the position of creditor of said M. Zier & Company, only. And, in so much as the completion of said contract can only be done at a great loss to this estate, this Receiver recommends that it be instructed to report some new arrangement with said Walters rather than that it carry out the old contract.

Third.—Houston, Stanwood & Gamble Company contracted with said M. Zier & Company for two 66 inch by 18 feet, and one 66 inch by 16 feet boilers, said Houston, &c. to pay the total sum of $1,316.95 therefor. After the completion of said boilers, the same were billed to said Houston &c., said bill showing the number of said boilers. Same were left in the yard of M. Zier & Company as was customary between the parties; they were treated as the property of the said Houston &c. who paid $1,000.00 on account of said contract. It was customary between the parties to have boilers made and to let them lie in said yards until shipped according to the order and instructions of the said Houston &c. Petitioner is advised that the said property belongs to the said Houston &c. upon the payment by them of the balance owing upon said contract, to-wit: $316.95.

Fourth.—M. Zier & Company agreed to build for J. B. Speed & Company at Speeds, Indiana, a cement bin for the total sum of $1,075.80. About $788.89 worth of material therefor has already been delivered at said place on account of said contract, and it will cost about $175.00 to complete

said contract. Said J. B. Speed & Company have advanced to M. Zier & Company the sum of $371.75, and when said contract is completed the balance of $704.05 will be due and owing this Receiver. Under these circumstances, the petitioner recommends that said work be completed, and will continue to that end unless otherwise ordered.

This petitioner reports that there are other contracts for material and labor partially completed, but which are not complicated with advancements. And as to these, petitioner is now going ahead with the work of completing the several items for the purpose of delivery and payment thereupon.

It shows to the Court that its total receipt from all sources from the date of its appointment to January 13, 1903 is $3,461.77 while its total disbursements are $1,617.95, the details of all of which are to be found on the sheet attached hereto as a part hereof marked "Receipt and Disbursements."

II.

This petitioner would further show to the Court that the following state of facts exist with respect to its trust herein, to-wit:

There are on file in the office of M. Zier & Company the following contracts with divers presons and corporations for the delivery of the things and upon the prices indicated which contracts have heretofore been made by said M. Zier & Company, but upon which neither labor nor material has been furnished or made or advancements paid, viz:

Bedford Quaines Co., Bedford, Ind.

1 36-inch boiler. . . . . $ 230.00

Pittsburg Filter Mfg. Co., Pittsburg, Pa.

2 48-inch filters. 190.00

James McWilliams & Co., Louisville, Ky.	
1 30-inch tank	32.00
5 Lengths 20-inch pipe	115.00
1 36-inch tank	44.00
1 Brine tank	145.00
Louisville Soap Co., Louisville, Ky.	
2 16-feet soap tanks	1,100.00
Bedford Steam Stone Works, Bedford, Ind.	
1 30-inch x 60 foot smoke stack	140.00
Repairing one 60-inch boiler	125.00
W. E. Caldwell Co., Louisville, Ky.	
Material for one 10-foot x 6 foot tank	65.00
E. P. Slider, New Albany, Ind.	
1 50-horsepower portable boiler	600.00
Union Cement Lime Co., Louisville, Ky.	
2 50-inch x 22-feet boilers	1,398.00
United Gas & Electric Co., New Albany, Ind.	
1 Breeching	1,750.00
Union Breeching & Finishing Co., Greenville, S.C.	
Boilers, Drum, Long Turn Bend, six extra Heavy Eatons, Valves, Heater, etc., sold through International Steam Engineering Co.	5,980.15
TOTAL FACE VALUE OF CONTRACTS	$11,914.15

From the best sources of information attainable petitioner is informed that there is a profit of about 20 per cent. under normal conditions in the fulfillment of these contracts, and that there is a profit to be made in fulfilling each of them. It would show that there are many inquiries from customers and prospective customers, and that it believes, and therefore, alleges, that if this plant is to continue in

operation it can have additional business and can keep said plant reasonably busy.

It shows that there is now on hand about $8,500.00 worth of material some of which is raw and some worked material, and that better prices can be obtained in working it all up under contracts than selling it as it now is.

III.

This petitioner would show to the court that prior to the receivership herein the said M. Zier & Company were working about 100 to 125 men; that this receiver is now working about 40 men; that the smallest number of men with which the plant can be operated at all is 25 men; that the pay roll for the week ending with January 10, 1903, was $615.00, the rent $25.00, the fuel account about $25.00, the light bill about $2.00 and water about $2.00 or for those items, a total of about $669.00; that if the operation of said plant is to continue, petitioner should be instructed to fill the contracts now on hand mentioned above in paragraph 2, and be instructed to seek other profitable and advantageous work, and to buy such material from time to time as may be necessary for it to buy. It says that it should be authorized to issue receiver's certificates for the purpose of borrowing money and paying for material, operation and other expenses, etc. when necessary. It says that the men employed by it are employed by the day only, and that it is now employing and will employ only such number as is necessary.

IV.

This petitioner would show to the court that it is in doubt as to a recommendation concerning the indefinite

operation of the said plant; that while there is possibly a good profit to be made thereby for the benefit of the estate herein, the operation thereof is fraught with danger of loss, and so it is that this petitioner recommends that a day and place be fixed for the hearing of this report and petition and that the defendant, M. Zier & Company, and its officers and the creditors of this estate be notified thereof by this receiver, by mail, and by publication, to be then and there present to be heard with respect to their recommendations or objections thereto, and that they determine what shall be done with respect thereto.

A list of the creditors as shown by the books of said M. Zier & Company is attached hereto as a part hereof marked "List of Creditors."

And finally petitioner would show that divers and various complications are threatened and will probably arise, over various claims against this estate, and against this estate, and petitioner says that same will result in great expense and vexatious delay and annoyance to this estate in the settlement thereof unless same be prosecuted in this suit, and that all creditors and other persons should be notified to prove their claims against this estate, with this receiver or in this cause and be enjoined from prosecuting any claim against this estate except by intervening petition in this cause.

WHEREFORE: The premises considered, your petitioner prays that his action herein, so far as reported, be approved and ratified; that it have the Court's instructions with respect to continuance of the operation of said plant; that a time be fixed for the hearing of this report and petition, and that the defendant, M. Zier & Company, and its officers, and the creditors of said M. Zier & Company, be notified, by mail and by publication, of the time and place of the hearing of this report and petition, at which time said creditors shall appear

and make known their recommendations or objections to the continuance of the operation of the plant herein; that all creditors be required to prove their claims against this estate by filing proof therefor with this Receiver, or by intervening petition in this cause, and that all creditors and persons be enjoined and restrained from prosecuting suits involving this estate in any manner except by intervention in this action; and it prays for all such further and other relief as the circumstances of the case may require, and as to equity belongs.

NEW ALBANY TRUST COMPANY,
By Fred Sauer, *Sec'y.*
Receiver.

STATE OF INDIANA, }
County of Floyd. }

Fred Sauer says he is Secretary of the New Albany Trust Company, and has the active charge of the Receivership of M. Zier & Company, and that the facts stated in the foregoing report and petition are true.

FRED SAUER.

Subscribed and sworn to by Fred Sauer before me this 16th day of January, 1903.

CHARLES B. SCOTT,
Clerk.

By William F. Ruoff,
Deputy.

AND upon the filing of the foregoing Petition and Report, at the said January Term, 1903, of the Floyd Circuit Court on the 16th day of January, 1903, before the Hon. William

C. Utz, Sole Judge among other the following proceedings were had to-wit:—

Joseph T. Ryerson & Son,
vs.
M. Zier & Company.
No. 5575.

This day came the New Albany Trust Company, Receiver of M. Zier & Company and filed an inventory and appraisement and its report and petition herein and said report and petition having been heard, it is now ordered that the same be set for the 24th day of January, 1903, at the hour of 9 o'clock a. m. at the Court Room of this Court to be further heard on the advisability of continuing the operation of the plant of M. Zier & Company and all kindred questions and the Receiver in this cause is now hereby ordered and directed to mail to the defendant M. Zier & Company and its President and Secretary and to all the persons and corporations shown in said report as creditors of said M. Zier & Company, printed notices of the fact that said petition is set for hearing on said date, place and hour, at which time all persons interested in this cause will be heard on the matters embraced in said report and petition.

It is further ordered that the receivership herein be continued and the operation of the plant herein be continued as heretofore ordered until the further order of Court, and said Receiver is ordered and directed to complete the contracts with Grainger & Company and J. B. Speed & Company under the terms and conditions proposed by said Receiver in said report and petition, no action is taken by the Court on the contracts with J. E. & F. Walters and Houston, Stanwood & Gamble Co. as set forth in said report and petition.

And this cause is reversed in all matters for such further order therein as may be deemed necessary."

And afterwards at the said January Term, 1903 of the said Floyd Circuit Court, on the 24th day of January, 1903 the Hon. William C. Utz, Presiding, the following Report and proofs of notice was filed in open Court, to-wit:—

FLOYD CIRCUIT COURT.

"Joseph T. Ryerson & Son,
vs.
M. Zier & Company.

Comes the New Albany Trust Company Receiver herein and files its report of receipts and disbursements made since its last report herein to-wit:

1903 — Receipts.

Jan'y 15th.	Balance		$1,843.82
" 20th.	Todd Obenchain Co.		30.90
			$1,874.72

Disbursements.

Jan'y 16th,	C. I. & L. Ry. Co	$ 17.75	
" "	Hoffman Ahlers & Co	34.62	
" "	Rodenbush & Payne	8.64	
" "	Globe Rolling Mill Co	231.21	
" 17th,	Scully Steel & Iron Co	243.20	
" "	United Gas & Electric Co.	27.00	
" "	Roudenbush & Payne	9.38	
" "	L. Hammersmith	32.73	
" "	J. G. Eury, Bookkeeper	526.84	
" "	" " "	17.05	
" 18th,	W. M. Mix.	15.00	
" "	S. J. Gardner	15.00	
" 20th,	B. O. & S. W. Ry. Co.	32.61	$1,211.03
			$633.69

It also files herewith as a part hereof a copy of a notice which this Receiver in pursuance of the order of Court mailed to M. Zier & Co. and to all the creditors of M. Zier & Co. the same being deposited in the United States Mail on Saturday, January 17th, 1903.

THE NEW ALBANY TRUST COMPANY,
By Fred Sauer, *Secretary.*
Receiver of M. Zier & Co.

Subscribed and sworn to by Fred Sauer this 24th day of January, 1903.

CHARLES B. SCOTT,
Clerk F. C. C

EXHIBIT.

"THE NEW ALBANY TRUST COMPANY,

New Albany, Ind., January 16, 1903.

. . . . . .

Dear Sirs:

You are hereby notified that we on this day filed in the Floyd Circuit Court our report and petition concerning the assets of M. Zier & Co. and indefinite operation of the plant. The report shows the assets are of the value of $28,434.81 and unfinished contracts of the value of about $8,000.00 and contracts on which no work has been done amounting to $11,914.15. On a hearing of the petition the Court fixed the 24th day of January, 1903, at the hour of 9 o'clock a. m. at the Court Room at New Albany, Indiana, for a further hearing of the report and petition on the question of further operation of the plant and all kindred questions at which call all creditors and all persons interested in this cause may be present and be heard.

You are therefore notified to be present in person or by attorney and then be heard.

Respectfully,
THE NEW ALBANY TRUST COMPANY,
Receiver M. Zier & Co.
By Fred Sauer, *Sec'y.*"

AND upon the filing of the foregoing report, etc., at the said January Term, 1903 of the Floyd Circuit Court on the 24th day of January, 1903, before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co.
} No. 5575.

This cause coming on to be heard on the reports and petitions of the Receiver herein, and the several matters involved therein, and it appearing to the Court that all the creditors as shown by the books of the defendant M. Zier & Company had been notified by said Receiver to be present on this day to be heard on said matters and the following creditors being present in person or by attorney to-wit:

By Jewett & Jewett, Attorneys:
Louisville Fire Brick Works.
L. Hammersmith.
F. R. Baker.
New Albany Manufacturing Co.
I. F. Force Handle Co.
Cincinnati Iron Store Co.
Queen City Supply Co.
Gertrude Strobel.
Minnie M. Zier.

Herter & Hester, Attorneys:
Jones & Laughlin Steel Co.
Crucible Steel Co. of America.
Reading Iron Co.
John Schleay, Jr., Co.
Inland Steel Co.
Burtt & Taggart, Attorneys:
E. A. Kinsey Co.
By Stotsenburg & Weathers, Attorneys:
Globe Rolling Mills Co.
New Albany National Bank.
Pittsburg & Supply Co.
Roudenbush & Payne.
By McIntyre, Bulleit & James, Attorneys:
C. U. Williams, agent Pennsylvania Railroad Co.
By C. D. Kelso, Attorney:
United States Tube Co.
Indiana Water Co.
By W. W. & J. R. Watts, Attorneys:
National Foundry and Machine Co.
Chicago Pneumatic Tool Co.
W. B. Belknap & Co.
Ahrens and Ott Mfg. Co.
Jos. T. Ryerson & Son.
A. M. Castle & Co.
Ohio Falls Varnish Co.
Portsmouth Steel Co.
John Finger and Son.
Lewis and Creed.
Louis Bir.

And the following creditors being before the Court by letters filed in this cause to-wit:

The Cincinnati Railway Supply Co.

The Dowerman Rivet and Bolt Mfg. Co.

Edward Kelly Foundry Co.

The Cleveland Steel Company.

And said creditors having entered their appearance and having been heard with respect to the matters herein, it is now ordered and without objection thereto, that the Receiver herein shall pay in full the rent due on the premises on plant of said M. Zier & Co. to the Chicago, Indianapolis & Louisville Railway Co. the lessor of said premises.

The Receiver herein having reported that John E. & Frank Walters have agreed to pay into Court and into the hands of the Clerk of this Court the sum of $900.00 in full of the completion of the contract herein between said Walters and M. Zier & Co. said sum to be retained by said Clerk until such completion and the further order of Court the Receiver herein to deliver by January 28, 1903 the boilers and material to be furnished under said contract and to complete the work under said contract and according to the specifications thereof, within ten days from the date of completion of the brick work, which said Walters are to do to make said work ready for completion by said Receiver, said Walters agreeing that they will not delay the erection of the said brick work to be done for the erection of said boilers. Upon the entry of an order of Court directing said receiver to carry out such agreement, said Walters are to pay said money into Court as aforesaid and shall dismiss certain attachment proceedings they have instituted in Kentucky and cancel and surrender any claim they may have for damages on account of said contract, which may have accrued to this time. It is now ordered and without objection thereto that said agreement be and the same is hereby approved and said receiver is now ordered and directed to carry out the same upon the terms thereof.

It is further ordered by the Court after hearing said creditors in person and by attorney, and it appearing to be the unanimous wish of those present that the Receiver herein shall continue the operation of the plant herein until the further order of the Court and shall proceed to the completion of the unfinished contracts now on hand and the contracts amounting to $11,914.15 as set forth in the receiver's report and petition herein upon which no work or material has been done or furnished and shall accept and do such repair work or small jobs as it may be offered and as it may do, but not to make any new contract or take any other work, which will prolong the operation of said plant beyond the time of two months from this date except upon the further order of this Court. Said receiver is authorized to buy material borrow money or contract other indebtedness necessary for such operation to the extent of but not to exceed the sum of $5,000.00 and is authorized to issue certificates of any such indebtedness and said certificates shall bear interest at the rate of six per cent. per annum from their date until paid and they shall be and remain a first and superior lien upon all the assets in this estate to secure their payment and said receiver shall pay off said certificates from time to time when the funds in hand justify the same. Said receiver shall operate said business on as small expense as may be done and shall retain in the office of said plant one clerk only, at an expense of $4.00 per week unless otherwise ordered by the Court.

It is further ordered that all persons or corporations shown on the books of said M. Zier & Co. as creditors and all others who may be known to said receiver as creditors thereof, shall be notified immediately by said Receiver by mail to file their claims against this estate properly proved according to law, same to be filed with said receiver on or

before the 11th day of May, 1903, and said receiver shall further notify all creditors by publication by three insertions in one or more daily papers published in the City of New Albany, Indiana, to prove and file such claims within said time. And it is now ordered that all creditors and other persons be and they are hereby enjoined and restrained from prosecuting any claim or suit against this estate except by intervention in this cause or by first obtaining leave of this Court.

And this cause is now reserved on all matters for the entry of such orders as may appear to be necessary."

AND afterwards, at said January Term, 1903, of said Floyd Circuit Court on the 14th day of February, 1903, the Hon. William C. Utz, Presiding, the following petition and report was filed in open Court, to-wit:

"FLOYD CIRCUIT COURT.

Joseph T. Ryerson & Son,
Complainant.
vs.
M. Zier & Co.,
Defendant.

PETITION OF NEW ALBANY TRUST CO. CONCERNING PROCEEDINGS IN BANKRUPTCY.

Respectfully represents the New Albany Trust Company, receiver of M. Zier & Co. under order of appointment herein that since its last report herein the following is the status concerning the matters pertaining to this estate, to-wit:

That pursuant to the order of Court herein entered on the 24th day of January, 1903, it has entered upon the ful-

fillment of the contract or agreement between this receiver and John E. and Frank Walters therein set forth, as also with the uncompleted and the new contracts therein ordered and directed to be completed and fulfilled; that while some of the same have been completed, others there are, and particularly said Walters contract, which are in a state of incompletion and upon which this Receiver is now working; that it has in all respects obeyed and is carrying out the provisions of said order. Said order is now referred to as a part hereof in all respects as fully as if copied herein in haec verba.

Petitioner would show to the Court that said order so made part hereof was entered by this Court only after the most careful consideration by this Court, your petitioner and the creditors of said M. Zier & Co. that this petitioner being in some doubt as to what should do or recommend with respect to said estate did on the 16th day of January, 1903 file in this Court, in open Court its report and petition showing among other things the appraisement details and character of the assets of said M. Zier & Co. coming to its hands, and that therein it recommended among other things, that said report and petition be set for a particular day for hearing thereon; that in the meantime said M. Zier & Co. and its officers, and all the creditors of said M. Zier & Co. as shown by the list of creditors then filed, and which list included the Inland Steel Co., John C. Thruston and Dey Time Register Co., be given notice thereof by the United States Mail, so that any and all creditors or persons interested therein should be present and be heard, and make known their recommendations or objections with respect thereto. Said petition and said list are now referred to as part hereof as fully as if copied herein; that on said 24th day of January this petitioner filed its report herein among

other things showing the facts with respect to such notice, filing a copy thereof, and that it had sent such notice by mail deposited in the United States Mails on the 17th day of January, 1903, and such notice was mailed by this Receiver on said day to all the creditors so shown in said list, including said Inland Steel Co., John C. Thurston and Dey Time Register Co. aforesaid.

On the said 24th day of January, 1903 said cause was called by this Court on said report and petition, and there then appeared divers of said creditors in person or by attorney, at said hearing; that said report and said petition was then before said creditors in open Court discussed, under and by which discussion settlement and disposition was made of the divers matters under discussion and set forth in said report and petition and kindred matters therein and there and then appeared the Inland Steel Company and Jacon Herter and George H. Hester as its attorneys, and said Inland Steel Company and said Herter and Hester as such attorneys, entered their appearance as is disclosed by said order dated January 24, 1903 herein, and said attorneys and, especially said Hester as such attorney participated in said proceedings, that said Hester was also attorney for said Walters with respect to the contract between said Walters and said Zier & Co. and this Receiver, and was so present insisting upon its fulfillment and agreeing to its carrying out as provided in said order; that at said hearing, said order of said January 24, 1903 was entered without objection from said Inland Steel Company, John C. Thruston and Dey Time Register Co., or any creditor present in person or by attorney or any creditor notified as aforesaid, or any creditor or person; that at no time has there been objection by any one to the Receivership herein, nor motion of any nature to set aside this Receiver's appointment.

Your petitioner would now show to the Court that among other things said order provided that all creditors and other persons be and they were then and thereby enjoined and restrained from prosecuting any claim or suit against the estate herein except by intervention in this cause, or by first obtaining leave of this Court and thereupon said cause was retained as to all matters for the entry of such orders as may appear to be necessary, and said order appointing this Receiver has never revoked or set aside and same is now in full, force and effect.

The petitioner would now show to the Court that without respect to what has been done herein as herein set forth said Inland Steel Co., John C. Thruston and Dey Time Register Co., have since the entry of said order on January 24th, 1903 as petitioner is informed, believes and alleges, filed a petition in involuntary bankruptcy against said M. Zier & Co. as alleged by them on grounds of bankruptcy as provided by the Act of Congress entitled "An Act to Establish a Uniform System of Bankruptcy Throughout the United States" approved July 1, 1898; that said petition was filed in the District Court of the United States for the District of Indiana, at New Albany, Indiana on the 6th day of February, 1903, that thereafter, to-wit: On February 11, 1903 a supplemental petition was filed, based on said Act of Congress, as amended; that on said February 11, 1903, said petitioner, Inland Steel filed in said Court a petition verified by said Hester in which they set forth the receivership herein, and without showing to that Court all the facts herein, set forth, to-wit: Their notification as to the hearing of said report and petition, the participation of said Inland Steel Company and said Herter and Hester as attorneys in this proceeding, their appearance herein, the consideration of said receivership by said credit-

ors, and the restraining order and injunction herein an order was then obtained therein whereby one Frederick D. Conner was by that Court appointed receiver and directed to take charge of the estate of M. Zier & Co. in bankruptcy and therein this receiver was ordered to deliver up to said Frederick D. Conner as such receiver, the said property and effects of said M. Zier & Co. now in its possession and to refrain from interfering in any way with said Conner's possession as receiver.

Petitioner is further informed, believes and alleges that said Hester as such attorney and said petitioning creditors, said Frederick D. Conner and Henry U. Pettit, the Marshal of said District Court of the United States for the District of Indiana, are now seeking and will seek to disturb this Court's Receiver in its possession and without the order of this Court, and irrespective of the matters herein set forth and endeavoring and will endeavor to take possession thereof and from this receiver.

Petitioner would show that the creditors whose appearance are noted before this Court in the entry of the order herein on January 24, 1903, have claims aggregating about $53,279.51 against the estate herein; that certain creditors whose claims aggregate $11,622.49 have filed their claims with this receiver, thus making a total of $64,902. in amount so filed or appearing; that the total liability of the estate of $76,463.36; that the total number of creditors is 76; that 37 appeared to this action, as appeared by said order and 25 including said Dey Time Register Co. have filed their claims with this receiver for the purpose of participating in this estate making a total of 62 creditors so appearing or filing their claims with this receiver.

Petitioner says that with a view to the observance of that comity existing between the State and the Federal

Courts as defined by the Supreme Court of the United States and the several Federal and State Courts, and with a view to avoiding the clash of jurisdiction herein necessarily to be brought about on the enforcement of said Court's order, this petitioner caused its attorneys to hold conversation over the long distance telephone between New Albany and Indianapolis, Indiana, with the Honorable A. B. Anderson, Judge of said District Court of the United States for the District of Indiana on this 13th day of February 1903, and therein caused said counsel to urge that because thereof said order appointing such receiver should not be enforced until after said matters sould be presented to this Court with the request that this Court direct it and its said attorneys to lay said matters before said, the Honorable A. B. Anderson, Judge of said Court, as this Court might direct, whereupon said Judge requested petitioner's counsel to notify said Hester as such attorney, that said matter might be heard on Monday February 16, 1903 at Indianapolis, Indiana, and that in the meantime the said order appointing said Connor such receiver was not to be enforced; that thereupon petitioners counsel so notified said Hester as such counsel by service of a written notice thereof, a copy of which is filed herewith as part hereof marked "Notice."

Petitioner would further show to the Court that this Court is about to adjourn over to its next term and that the first day thereof will be the 9th day of March 1903; that the order herein above referred to entered on January 24, 1903, directed this receiver to go on with and complete various contracts at that time submitted and discussed; that it has entered upon said work; that the operation of this plant was for the beneficial purpose of this estate; that while it involves much outlay to continue its operation, it has reduced all expenses to the minimum; that the cessation of said

plant means much loss to the creditors of this estate in that it will dispel the organized force of skilled workmen now employed by petitioner; that it will involve this estate in many complicated questions of loss or damage with respect to the fulfillment of the contract which it has so undertaken to fulfill. That it would work great hardship on this receiver and upon this estate to leave it with this Court adjourned and without order and instructions as to what to do; that this Court should so instruct it and order it as to the matter herein and especially for the time between the time of its adjournment and its convention again that this receiver is advised, it is an officer of this Court only, and that it must be ordered and directed by this Court only with respect to the property in its hands.

And so it is that this petitioner would now show that it is advised, believes and alleges:

1. That the injunction and restraining order of this Court herein has been knowingly violated by said Inland Steel Co. and said Dey Time Register Co., and Herter and Hester, attorneys for said Inland Steel Company.

2. That said Inland Steel Company and said Dey Time Register Company and all other creditors are estopped from prosecuting said petition in bankruptcy, and especially said petition seeking to take from this receiver the assets in its hands.

3. That all creditors and others are enjoined and restrained from prosecuting any attempt to take from this receiver any of the assets in its hands as receiver except by leave of this Court on intervention herein.

4. That the record in said District Court of the United States for the District of Indiana does not disclose all the facts of the matters herein; that said Court was not informed as to the injunction restraining order and estoppels by

entries of appearance, participation and otherwise herein occurring and in this petition set forth.

5. That the assets of M. Zier & Co. in the possession of this receiver are in custodia legis; that the parties have submitted to this form; that this Court came into lawful custody thereof, and said several orders and proceedings were entered and had before the institution of said bankruptcy proceedings and attempt to oust this Court and this Receiver therefrom; that because of the respect between the Courts, both State and Federal, for the orders and decisions of each other in said matters and because of the spirit of comity existing between said Courts as fixed and defined by the Supreme Court of the United States, the several Federal and State Courts, had said District Court been advised of the matters herein set forth, said Court would not have entered said order as set forth, or would have so modified said order as to direct said Connor to come to this Court by intervening petition and plead his causes here.

6. That this petitioner believes and therefore, alleges and charges that said District Court under the peculiar circumstances of this case will co-incide with this Court, if it shall deem it wise to enter orders herein specifically enjoining and restraining the said Inland Steel Company, John C. Thruston, Dey Time Register Company and Herter and Hester, attorneys, said Frederick D. Connor, individually and as Receiver and Henry U. Pettit the Marshal of the District Court of the United States for the District of Indiana, from further prosecuting any matters in relation to this estate with respect to the matters herein alleged or the taking of said assets in any manner except by intervention in this action.

The premises considered this petitioner recommends and prays that it be instructed, directed and ordered what

it shall do with respect to the estate in its hands now pending the controversy and adjournment of Court herein; that it shall present the facts in this matter to the said District Court of the United States for the District of Indiana, either by limited or general appearance in said suit instituted by said Inland Steel Company, et al. in bankruptcy; and ask such relief, if any, as this Court may direct; that said Inland Steel Company, John C. Thruston and Dey Time Register Company, said Frederick D. Connor, Receiver and individually and said Henry U. Pettit, Marshal of the District Court of the United States for the District of Indiana be enjoined and restrained from in any suit, summary process or otherwise, or in any manner attempting to or ousting or taking from this Receiver the possession of said estate except by intervention herein and proper orders entered in this cause; that this receiver be directed to continue the operation of said plant as heretofore ordered and to report to this Court any molestation of whatever nature it shall suffer in such operation in violation of such orders.

It prays for such other and further relief as the circumstances of the case may require and as to equity belongs.

W. W. & J. R. WATTS,
Attorneys for Petitioner

Fred Sauer, says he is the Secretary of the New Albany Trust Company, receiver petitioner in the foregoing petition, having in charge the active management of the Trust herein mentioned, and that the statements in the foregoing petition are true.

FRED SAUER.

Subscribed and sworn to by Fred Sauer before me this 14th day of February 1903.

CHARLES B. SCOTT,
Clerk F. C. C."

AND upon the filing of the foregoing petition at the said January Term 1903 of the Floyd Circuit Court, on the 14th day of February 1903, before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co.
} No. 5575.

Comes the New Albany Trust Company, receiver herein and files its petition herein showing to the Court divers matters concerning the filing of a petition in the District Court of the United States for the District of Indiana; by the Inland Steel Company, John C. Thruston and Dey Time Register Company, as creditors of said M. Zier & Co., in involuntary bankruptcy and a petition seeking the appointment of a receiver therein to take charge of the assets in this Court's possession through its receiver herein, whereupon such an order was entered, Frederick D. Connor being named as receiver and being directed to take possession of such assets, and further showing to the Court that the record in said case disclosed the fact that said Court was not fully advised as to the various orders, injunctions, restraining orders, and estoppels by entries of appearance and participation in these proceedings by divers creditors of this estate, including said Inland Steel Company and Dey Time Register Company, petitioning creditors therein, and further showing that because of the immediate adjournment of this Court and its convention not being again had until March 9th 1903, and the operation of the plant herein made by and with the advice of much more than a majority in number and amount of the creditors herein, including said Inland Steel Company, such petitioning creditor in bankruptcy

and this Court now after havig read said petition and having considered the various exhibits referred to in such receiver's petition and the entire record of this cause and being fully advised is of the opinion that had said District Court of the United States for the District of Indiana been fully advised of the divers matters herein occurring it would not have entered such order as has been therein entered: that because of the comity existing between the Courts of this Country, State and Federal, its order would at most have directed any attempt to take the assets herein to be by intervention in this cause and that only, and being of the opinion that said District Court will coincide with these views and a state of necessity for the entry of this order existing, It is now ordered that the Receiver herein conduct the operation of the plant herein as heretofore ordered and directed; that said Inland Steel Company, John C. Thruston and Dey Time Register Company, Frederick D. Connor individually and as receiver and Henry C. Pettit individually and as Marshal of the District Court of the United States for the District of Indiana and all others in any capacity be and are hereby enjoined from in any wise molesting, interfering with or attempting by legal process or otherwise to take possession of the estate of M. Zier & Co. in the hands of this Court through its receiver herein, and in the hands of said receiver until the further order of this Court, and except by intervention in this cause.

And said Receiver is now hereby ordered and directed through its attorney, to proceed to Indianapolis, Indiana, and there by a limited appearance and by protestation against appearance, only, by petition upon such appearance only, lay before said District Court of the United States for the District of Indiana the facts with regard to the matters herein, said injunction, restraining order, and said estoppels and to

suggest to said Court the orders of this Court and the fact that had it been fully informed, as is believed by this Court, its order with respect to the assets herein would at the most have been a direction to make an application to this Court at the proper time and in the proper way for delivery of the said assets to such District Court's receiver or trustee after proper disposition and settlement of the matters herein.

The Court being further advised and on motion of said New Albany Trust Company, receiver, It is ordered that the Inland Steel Company, John C. Thruston and The Dey Time Register Company, be and they are hereby ordered to appear and show cause why they have prosecuted said petition in involuntary bankruptcy why they have filed said petition seeking the appointment of a receiver for the assets of this estate, why they have sought to take from this Court the assets of this estate, why they should not be punished for contempt for disobeying the orders of this Court without first obtaining leave of the Court by petition of intervention or order in this cause. And they are hereby commanded to show such cause on or at the time of the first day of the next term of this Court. And service of a copy of this order upon Jacob Herter and George H. Hester because of their apparent representation of said petitioning creditors and then said co-counsel for the purpose of this show cause order shall be deemed sufficient for the service thereof on all said persons and parties.

And It is further ordered that this Court shall retain such control of said matters as may be necessary for the purpose of the entry of any and all such orders as may be deemed proper and necessary herein and therein. And Jacob Herter and George H. Hester such attorneys now being present in Court and Hester having been heard in opposition to the said petition and having notice of the

entry of this order It is now ordered that no other or further notice hereof need be given the said Inland Steel Company, John C. Thruston and Dey Time Register Co., petitioners in said bankruptcy proceedings. And comes now C. D. Kelso and asks leave of the Court to withdraw as the attorney of record for the following named parties; United Gas and Electric Company, United States Tube Company, Indiana Water Company and Simon David and the Court now permits the said C. D. Kelso to withdraw herefrom."

AND afterwards at the said January Term, 1903 of said Floyd Circuit Court on the said 14th day of February 1903 before the Hon. William C. Utz, Sole Judge among other the following proceeding were had to-wit:

"Joseph T. Ryerson & Son,
vs.
M. Zier & Co. } No. 5575.

Comes now Frederick D. Connor as receiver by George H. Hester his attorney, and by leave and order of the Court and upon his own motion, makes himself a party to this proceeding, and thereupon by leave of the Court files his verified petition showing his appointment as receiver of said M. Zier & Co. by order of the United States District Court for the District of Indiana and praying this Court for an order requiring the said New Albany Trust Company, as receiver of said M. Zier & Co. to turn over and surrender to him said Frederick A. Connor, as receiver in bankruptcy, the property of said M. Zier & Co. of which the said New Albany Trust Company as receiver of said M. Zier & Co. under the orders of this Court is custodian and the matter of said petition is now continued until the next term of this Court.

AND afterwards at Chambers, In Vacation, of the Floyd Circuit Court on the 16th day of February, 1903, before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co. } No. 5575.

Comes now W. W. Watts, attorney for the New Albany Trust Company as receiver of M. Zier & Co. and files before the Judge of the Floyd Circuit Court a written statement which reads in words and figures as follows, to-wit:

"FLOYD CIRCUIT COURT.

STATE OF INDIANA, } *ss.*
Floyd County. }

Joseph T. Ryerson & Son,
Complainant.
vs.
M. Zier & Co.,
Defendant.

STATEMENT AND MOTION BY NEW ALBANY TRUST CO., RECEIVER, AND W. W. WATTS, ITS ATTORNEY.

To the Honorable Judge of the Floyd Circuit Court in Chambers:

Respectfully represents the New Albany Trust Co., receiver herein, and W. W. Watts, one of its attorneys herein, that pursuant to the order of the Court herein entered on Saturday, February 14, 1903, they on the 16th day of February, 1903, at Indianapolis, Ind. filed before the District Court of the United States for the District of Indiana, A. B. Anderson, Judge presiding, a statement of the New Albany Trust Co., receiver under the order of this Court setting forth the facts by protestiation and limited appearance only and showing to said Court the reasons for a modi-

fication of its order theretofore entered appointing a receiver granting an injunction and restraining order and directing its receiver to take possession of the assets of M. Zier & Co.

This receiver and said attorney say they have made diligent effort to carry out the orders of this Court with respect to those matters, but the order of said Court remains as it was and they now move the Court to strike and expunge from the files herein the petition of this receiver filed herein on the 14th day of February, 1903 and the order entered thereon.

NEW ALBANY TRUST CO.,
Receiver.
By W. W. Watts, *Attorney.*"

And the Judge after considering said statement refuses to concur therein, but orders that the matters and facts therein stated show that said W. W. Watts has been guilty of a contempt of Court and it is now ordered that rule be issued against the said W. W. Watts, to appear before the said Judge on the 21st day of February, 1903 at 3 o'clock p. m. and show cause, if any he has, why he should not be punished for contempt.

Dated Feby. 19th, 1903. WILLIAM C. UTZ,
Judge."

AND afterwards, at Chambers, in Vacation of the Floyd Circuit Court on the 19th day of February, before the Hon. William C. Utz, Sole Judge, among other the following proceedings were had, to-wit:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co. } No. 5575.

Comes now the New Albany Trust Company as receiver of M. Zier & Co. and tenders to the Judge of the Floyd Cir-

cuit Court, its written resignation as such receiver, which written resignation reads in words and figures as follows, viz:

"STATE OF INDIANA, }
County of Floyd. } *ss.*

Joseph T. Ryerson & Son, }
vs. }
M. Zier and Company }

To the Honorable, Judge of the Floyd Circuit Court, In Chambers:

The New Albany Trust Company, receiver in the above entitled cause respectfully shows to the Court that in pursuance of the order heretofore made by this Court it appeared by limited appearance and protestation only as ordered by this Court before Judge A. B. Anderson, of Indianapolis, Judge of the United States District Court for the District of Indiana, on Monday the 16th day of February, 1903, and that upon the hearing in that Court this Receiver stated to the Honorable Judge of said United States District Court that it was ready and willing to turn over to the receiver appointed by the Honorable Federal Court in bankruptcy proceedings, of M. Zier and Company, then pending in said Court the property and assets of said M. Zier and Company in the hands of this receiver, and this Receiver further states that it has not yet been able to make up its accounts as receiver as to the receipts and disbursements, but that it is now preparing the same to be submitted to this Court; but that it is ready to turn over to Frederick D. Connor, the receiver appointed by the United States District Court in bankruptcy all of the property of the said M. Zier & Company; and this receiver now prays for an order of this Court authorizing it to turn over to said Frederick D. Connor,

the property of said M. Zier and Company, now in its hands together with any balance in cash which may remain after such statement of its accounts shall be made up and presented and that upon delivering said property to said Frederick D. Connor, receiver aforesaid, it be discharged from all further liability for or on account of said property or assets of said M. Zier and Company so turned over to such Connor as such receiver.

This receiver further asks that upon making up and presentation of its accounts for allowance to this Court, that it be allowed to resign as Receiver of the said M. Zier & Company, and that upon the approval of its accounts its said resignation be accepted by this Company, and that it be fully and finally discharged as such receiver. All of which is respectfully submitted.

THE NEW ALBANY TRUST COMPANY,
By Henry E. Jewett,
Vice-President.

Henry E. Jewett being sworn on his oath, says: He is the Vice-President of the New Albany Trust Company and makes this affidavit on behalf of said Company; that the statements contained in the foregoing petition are true in substance and fact as he verily believes.

HENRY E. JEWETT.

Subscribed and sworn to before me this 19th day of February 1903. CHARLES B. SCOTT, *Clerk*,
By William F. Ruoff, *Deputy*."

And the Judge after reading said tender of resignation holds that the matters therein set forth show that said Receiver is in contempt of Court, and the Judge orders that a rule issue at once against said Receiver to appear before the undersigned Judge on the 21st day of February 1903 at

3 o'clock p. m. and show cause, if any it has or can, why it should not be punished for contempt of Court.

WILLIAM C. UTZ,

Dated Feby. 19, 1903. *Judge.*"

AND afterwards in Vacation, at Chambers of the Floyd Circuit Court on the 20th day of February 1903, before the Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:

IN VACATION.

"Joseph T. Ryerson & Son,
vs.
M. Zier & Co. } No. 5575

Comes now the plaintiff by W. W. Watts, its attorney, and comes also the New Albany Trust Company, as Receiver in the above entitled cause; comes also the United States Tube Company, by D. A. Saches, its attorney, and files before the Judge of this Court its verified statement, which reads in words and figures as follows to-wit:

"STATE OF INDIANA }
County of Floyd. } *ss.*

Before Honorable William C. Utz, Judge thereof in Vacation:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co.

IN THE MATTER OF THE RECEIVERSHIP OF SAID DEFENDANT M. ZIER & CO., NEW ALBANY TRUST COMPANY, RECEIVER.

Comes now the United States Tube Company by D. A. Sachs, its attorney, and respectfully represents to the Court,

that on the 19th day of February 1903, the said New Albany Trust Company as such Receiver of said M. Zier & Co. did wrongfully, unlawfully and without leave of this Court turn over and surrender the possession of the M. Zier & Co.'s boiler plant located at the Northeast corner of Upper First or Pearl and Oak streets in the city of New Albany, Indiana to one Frederick D. Connor, who is acting as receiver in bankruptcy claiming to have been appointed by the District Court of Indiana, sitting in bankruptcy, and that said New Albany Trust Company, as such receiver of said M. Zier & Co. is now threatening to and will, unless restrained by order of this Court turn over to said Frederick D. Connor as such receiver in bankruptcy, all the other assets of said M. Zier & Co. remaining in its hands as such Receiver.

Wherefore your petitioner prays that the said New Albany Trust Company, as such receiver, be cited to appear before your Honor in Chambers, at 3 o'clock p. m. of this the 20th day of February 1903 and show cause, if it any have or can, why it should not be punished for contempt of Court, and the undersigned further prays that if this Court finds that said receiver has violated the orders of this Court as above represented, that it be removed from its office as such receiver, and a successor immediately appointed, and that said receiver be required to file its account immediately and to turn over to its successor all of the property it now has in its hands as such receiver belonging to said M. Zier & Co. and your petitioner further prays for such other orders as the Court may deem right and proper in the premises.

Respectfully submitted,

UNITED STATES TUBE COMPANY,

By D. A. Sachs,

Its Attorney.

D. A. Sachs, being first duly sworn upon his oath, says that the matters and facts as set forth in the above and foregoing petition are true as he verily believes so help him God.

D. A. SACHS.

Subscribed and Sworn to before me this 20th day of February 1903.

BERTHA L. SCOTT,

[SEAL.] *Notary Public.*

My commission expires January 12th, 1905."

And the application of said receiver to be permitted to resign as such is now disallowed by the Judge of this Court for the reason that said receiver in its said written tender of resignation openly and wilfully shows to the Court that it has violated the trust reposed in it by the Judge of this Court, and has wrongfully, unlawfully and without leave or permission of the Judge of this Court or said Court, surrendered the possession of the property of which it is custodian to Frederick D. Connor, and now the Judge of this Court, upon his own motion and because of the open contempt of said receiver for the orders, judgment and process of this Court does now order and direct, that said receiver be and it is hereby removed from its trust. And it is now ordered to immediately account to the Court for all of the assets of said M. Zier & Co. which came into its hands as such receiver, and now the Judge of said Floyd Circuit Court, upon his own motion appoints Charles D. Kelso as receiver of said M. Zier & Co. as successor to New Albany Trust Company; And the Judge of this Court now orders and directs that said Charles D. Kelso immediately qualify as such receiver and that he give bond in the sum of Thirty Thousand Dollars ($30,000.00) to the approval of the Judge of

the Floyd Circuit Court and that said receiver is now ordered by the Judge of this Court to immediately upon his qualification, demand of said New Albany Trust Company and of said Frederick D. Connor the immediate possession of the property of said M. Zier & Co. which came into the hands of said New Albany Trust Company as the receiver herein and if the said New Albany Trust Company or said Frederick D. Connor shall fail and refuse to immediately turn over and surrender the possession of said assets to said receiver, the Judge of this Court now orders and directs that said receiver immediately report such refusal and failure to surrender such assets to this Honorable Judge for further action in the premises.

And now comes Charles D. Welso and files with the Clerk of this Court his bond in the sum of Thirty Thousand (30,000.00) Dollars conditioned according to law with the United States Fidelity and Guaranty Company of Baltimore, Maryland as surety thereon, which bond is now approved by the Judge of this Court and the said receiver thereupon takes his oath of office. And the Judge of this Court now orders and directs that said receiver proceed to execute the duties of his trust in the same manner and being invested with the same powers as the New Albany Trust Company was heretofore invested, the present receiver being authorized to carry out all the orders of the Court heretofore made in this cause.

WILLIAM C. UTZ,
Judge.

Dated at New Albany, Ind.
February 20th, 1903.

AND afterwards at Chambers, in Vacation of the Floyd Circuit Court on the 20th day of February 1903 before the

Hon. William C. Utz, Sole Judge among other the following proceedings were had to-wit:

Joseph T. Ryerson & Son,
vs.
M. Zier & Co.

IN THE MATTER OF THE RECEIVERSHIP OF SAID DEFENDANT M. ZIER & CO., CHARLES D. KELSO, RECEIVER.

Comes now Charles D. Kelso, receiver of M. Zier & Co. and files before the Judge of the Floyd Circuit Court of Indiana in Chambers and in Vacation his verified report which reads in words and figures as follows to-wit:

Before the Honorable William C. Utz, Judge of Floyd Circuit Court:

"STATE OF INDIANA,
County of Floyd. } ss.

Joseph T. Ryerson & Son,
vs.
M. Zier & Co.

IN THE MATTER OF THE RECEIVERSHIP OF M. ZIER & CO., CHARLES D. KELSO, RECEIVER.

Comes now Charles D. Kelso, as receiver of M. Zier & Co. and respectfully shows to the Judge of this Court, that in obedience to the orders of this Honorable Judge he called upon the New Albany Trust Company and demanded of it the possession of all the assets of said M. Zier & Co., which came into its hands as receiver thereof, and that said Trust Company failed and refused to surrender the possession thereof for the reason that it had turned over the plant of

M. Zier & Co. located on Pearl and Oak Streets in the City of New Albany, Indiana, to Frederick D. Connor and that for the other assets of said Company it intended to account forthwith to the Honorable Judge of this Court. Thereupon the undersigned as receiver of said M. Zier & Co. called upon said Frederick D. Connor and demanded of him the possession of all the property of said M. Zier & Co. which had been wrongfully turned over to him by said New Albany Trust Company and that said Frederick D. Connor failed and refused to turn the same over to the undersigned.

Wherefore the undersigned prays for such other orders and decrees in the premises as the Judge In Vacation may deem just and proper.

Respectfully submitted,

CHARLES D. KELSO,

Receiver of M. Zier & Co.

Subscribed and sworn to before me this 20th day of February 1903.

CHARLES B. SCOTT, *Clerk, F. C. C.*

By William F. Ruoff, *Deputy.*"

And the Court having considered said report and being fully advised in the premises, finds that Frederick D. Connor has and is intermeddling with the assets of said estate and is interfering with the possession and control of said assets by the receiver of this court.

It is therefore considered, ordered and adjudged by the Judge of said Court, that a summary writ be issued in this cause directed to the Sheriff of this County, requiring the said Sheriff to immediately seize and to take into his possession and deliver over to Charles D. Kelso, receiver of M. Zier & Co. all the property of said M. Zier & Co., which said Frederick D. Connor now has in his possession, which con-

sists of the plant of M. Zier & Co. located at the corner of Pearl and Oak Streets in the City of New Albany, Indiana, including all tools and machinery, manufactured iron, scrap iron, appliances and other personal property therein situated, books, papers, accounts and choses in action, and that said Sheriff of said County execute said writ forthwith and upon the execution of said writ make his return to the Judge of the Honorable Floyd Circuit Court forthwith.

Dated at New Albany, Ind., February 20, 1903.

WILLIAM C. UTZ,
Judge."

STATE OF INDIANA, }
County of Floyd. } *ss.*

I, Charles B. Scott, Clerk of the Floyd Circuit Court within and for said County and State do hereby certify that the within and foregoing is a full, true and complete Copy of Entries of Record and Orders of Court together with the papers and pleadings set out and filed therein, in the receivership case of Joseph T. Ryerson and Son *versus* M. Zier & Company, as the same appears of record and on file in my office.

WITNESS my hand and the seal of said Court hereto affixed at New Albany, Indiana this 4th day of March, 1903.

CHARLES B. SCOTT,
Clerk Floyd Circuit Court.

[SEAL.]

STATE OF INDIANA, }
Floyd County. } *Sct.*

I, William C. Utz, Judge of the Floyd Circuit Court, in and for said County and State, do hereby certify that

Charles B. Scott, is the Clerk, and Keeper of the Seal thereof, that his attestation to the foregoing certificate is in due form of Law and that his genuine signature is thereto affixed.

WITNESS MY HAND and the seal of said Court hereto affixed this 4th day of March, 1903.

WILLIAM C. UTZ,
Judge Floyd Circuit Court.

[SEAL.]

STATE OF INDIANA, } *Sct.:*
Floyd County. }

I, Charles B. Scott, Clerk of the Floyd Circuit Court, in and for said County and State, do hereby certify that William C. Utz is the Judge of said Floyd Circuit Court, that his attestation to the foregoing Certificate is in due form of Law and that his genuine signature is thereto affixed.

WITNESS MY HAND and the seal of said Court hereto affixed this 4th day of March, 1903.

CHARLES B. SCOTT,
Clerk Floyd Circuit Court.

[SEAL.]

Exhibit B.

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF INDIANA.

In Bankruptcy. February 6, 1903.

In the matter of M. Zier & Company, Alleged Bankrupt. } No. 37. In Bankruptcy.

Come now the Inland Steel Company and other, by Ringer, Wilhartz & Louer, their solicitors, and file a petition to have M. Zier & Company adjudged a bankrupt. And said petition is in the words following, to-wit:

The petition of Inland Steel Company, a corporation, John C. Thurston and John Dey, doing business as Dey Time Register Company, respectfully represent that M. Zier & Company, a corporation, has for the greater portion of six months next preceding the date of the filing of this petition, had its principal place of business at New Albany in the State of Indiana in the County of Floyd and State and District aforesaid, and owes debts to the amount of over seventy-five thousand dollars; that your petitioners are creditors of M. Zier & Company, and have provable claims amounting in the aggregate, in excess of the securities held by them, to over Five Hundred Dollars; that the nature and amount of your petitioners' claims are as follows:

Said Inland Steel Company, a corporation, is a creditor of M. Zier & Company, a corporation, in the sum of Nine Hundred and Thirty-five Dollars, evidenced by the notes of said M. Zier & Company, payable January 20th, 1903, given for goods, wares and merchandise sold and delivered.

Said John C. Thurston is a creditor of said M. Zier & Company in the sum of Fifteen Dollars for goods, wares and merchandise sold and delivered.

Said John Dey, doing business as Dey Time Register Company, is a creditor of M. Zier & Company in the sum of One Hundred Dollars, evidenced by the note by the note of said M. Zier & Company, given for goods, wares and merchandise, sold and delivered.

Your petitioners further represent that M. Zier & Company is insolvent; that within four months next preceding the date of the filing of this petition in bankruptcy, the said M. Zier & Company committed acts of bankruptcy as follows:

First. Your petitioners allege upon information and belief that said M. Zier & Company did heretofore, to-wit: on divers dates within four months last past, while insolvent, transfer to the firm of Joseph T. Ryerson & Son of Chicago, and to Minnie M. Zier of Minneapolis, Minnesota, creditors of said M. Zier & Company, certain portions of the property of the said M. Zier & Company, with intent to prefer said creditors over and above the other creditors of said M. Zier & Company, the aggregate value of said property amounting at least to the sum of Five Hundred Dollars.

Second. That the said M. Zier & Company did on divers dates, within four months last past, while insolvent, transfer divers other portions of its said property to divers other persons who were then and there creditors af said M. Zier & Company, and especially to Minnie M. Zier, with intent to prefer such persons over and above the other creditors of M. Zier & Company.

Your petitioners further represent that said M. Zier & Company is engaged in the business of manufacturing boilers and kindred articles in the city of New Albany, Indiana, and has on hand a large stock of merchandise,

machinery and tools, and a large number of outstanding accounts; that under certain proceedings in a State Court a receiver has been appointed of the assets of said corporation, M. Zier & Company and is attempting to collect the assets of said estate, and incurring petty expenses in and about said estate, which must be borne by the creditors thereof; and your petitioners aver that it is absolutely necessary for the preservation of said estate of said M. Zier & Company, for the benefit of all of its creditors, that a Receiver in bankruptcy be appointed herein forthwith; that the total value of said assets of said M. Zier & Company does not exceed in value the sum of Thirty Thousand Dollars.

WHEREFORE your petitioners pray that a Receiver in Bankruptcy may be appointed herein by this Honorable Court, with the usual powers of Receivers in Bankruptcy in similar cases, and that service of this petition, with a subpœna, may be made upon said M. Zier & Company, as provided by the Acts of Congress relating to bankruptcy, and that said M. Zier & Company may be declared by this Court to be a bankrupt within the purview of said Acts

INLAND STEEL COMPANY,
JOHN C. THURSTON,
JOHN DEY, doing business as the
Dey Time Register Company,
By Andrew J. O'Donnell, their
duly authorized agent and
Attorney in Fact.

UNITED STATES OF AMERICA, }
District of Indiana. }

STATE OF ILLINOIS, }
County of Cook. } *ss.*

Andrew J. O'Donnell, being first duly sworn on oath deposes and says that he is the duly authorized agent and attorney in fact of the above named petitioners; that he has read the foregoing petition by said petitioners subscribed, and knows the contents thereof, and that same is true in substance and in fact, except as to the matters therein alleged to be upon information and belief, and as to those matters he believes it to be true.

Said affiant makes this affidavit as the duly authorized agent and attorney in fact of all the petitioning creditors herein.

ANDREW J. O'DONNELL.

Subscribed and sworn to before me this Fourth day of February A. D. 1903

HELEN WEIL,
[SEAL.] *Notary Public.*

And thereupon the following proceedings in the above entitled matter were had to-wit:

Upon the consideration of the petition of Inland Steel Company, John C. Thurston and John Dey, doing business as the Dey Time Register Company that M. Zier & Company be declared a bankrupt, it is ordered that the said M. Zier & Company do appear at this court, as a court of bankruptcy, to be holden at New Albany, in the District aforesaid, on the 28th day of February, 1903, at 9 o'clock in the forenoon

and show cause, if any there be, why the prayer of said petition ought not to be granted; and

It is further ordered that a copy of said petition, together with a writ of subpoena be served on said M. Zier & Co., by delivering the same to it personally or by leaving the same at its last and usual place of abode in said district, at least five (5) days before the day aforesaid.

And thereupon there issued out of the office of the clerk of said court a subpoena in the above entitled matter, in the words following, to-wit:

UNITED STATES OF AMERICA, }
District of Indiana. } *ss.*

To M. Zier & Company in said District Greeting:

For certain causes offered before the District Court of the United States of America, within and for the District of Indiana, as a court of bankruptcy, we command and strictly enjoin you, laying all other matters aside and notwithstanding any excuse that you personally appear before our said District Court to be holden at New Albany, in said District, on the 28th day of February, A. D. 1903, to answer a petition filed by the Inland Steel Company, John C. Thurston and John Dey, doing business as Dey Time Register Company in our said court praying that you may be adjudged a bankrupt and to do further and receive that which our said District Court shall consider in this behalf and this you are in no wise to omit under the pains and penalites of what may befall thereon.

Witness the Honorable A. B. Anderson, Judge of said Court, and the seal thereof, at New Albany, this 12th day of February, A. D. 1903.

NOBLE C. BUTLER, *Clerk*,
By George B. Cardwill,
Deputy Clerk.

Which said subpoena was afterwards, to-wit: on the 19th day of February, 1903, returned into the office of the clerk of said court, with the following return of the marshal endorsed thereon, to-wit:

I received this writ at Indianapolis Feb. 17, 1903, and on same day I served on the within named M. Zier & Company by reading to and in the hearing of Michael Zier Vice President of said company and handing him a true copy of this writ and at same time and place I delivered to him a copy of petition in Bankruptcy, he being the highest officer of said Company found in my district, at New Albany, Floyd County, Indiana. H. C. PETTIT,

U. S. Marshal,

By Alonzo Boyd,

Deputy.

And afterwards, to-wit: upon the 11th day of February, 1903, the Inland Steel Company, by its solicitors, filed its petition in the above entitled matter, in the words following, to-wit:

Your petitioner, Inland Steel Company, respectfully represents that it is a corporation organized under and by virtue of the laws of the State of Illinois and is a resident and citizen of the city of Chicago and State of Illinois. Your petitioner further represents that it is a creditor in amount of Nine Hundred Thirty-five Dollars ($935.) of M. Zier & Company alleged bankrupt, a corporation which has its principal place of business at the city of New Albany, County of Floyd, in the State of Indiana; that a petition has been filed by your petitioner and two other creditors to have said company adjudged a bankrupt which said petition was filed in this court on the 6th of February, A. D. 1903. That it is alleged in said petition that Joseph T. Ryerson & Son and

other creditors therein mentioned have received certain preferences from said alleged bankrupt within four months prior to the filing of said petition, contrary to the statute in such case made and provided, while said bankrupt was insolvent; that at the instance of said Joseph T. Ryerson & Son a receiver has been appointed by the Floyd Circuit Court of Floyd County, Indiana, to take charge of the assets of said alleged bankrupt; that the New Albany Trust Company is the receiver so appointed and that Henry E. Jewett, who is the attorney for said M. Zier & Company is also the Vice President of said New Albany Trust Company; that said receiver is now running the business of M. Zier & Company and is completing certain contracts and for that purpose has employed a large number of men in the manufacturing establishment of said M. Zier & Company and has placed in charge of said plant one Michael Zier, who is the Vice President and Treasurer of said alleged bankrupt; that said Michael Zier is wholly incompetent for said business, that he is wholly unfamiliar with bookkeeping and necessary office work which is essential to the safe conduct of said business, and your petitioner avers that if said receiver is permitted to remain in charge that it would result in injury and detriment of such of the general creditors of said M. Zier & Company who are entitled to participate in said bankrupt estate.

Your petitioner further states that W. W. and J. R. Watts, Attorneys at Louisville, Kentucky, are the attorneys for said Joseph T. Ryerson & Son in said proceedings wherein said New Albany Trust Company was appointed receiver and that said W. W. and J. R. Watts are also the attorneys for said receiver, and your petitioner fears that said receiver is friendly to said Joseph Ryerson & Son and to said alleged bankrupt to the detriment of the creditors at large of the said alleged bankrupt.

Your petitioner further alleges that it is absolutely necessary for the preservation of said estate for the benefit of all of the creditors who shall be entitled to participate therein that a receiver in bankruptcy be appointed herein forthwith to take charge of all of the assets of such alleged bankrupt and administer the same under the directions of this honorable court with the usual powers of receivers in such cases. Wherefore your petitioner prays that a receiver in bankruptcy be appointed forthwith and that such other and further orders be entered herein as to your honor shall seem meet and proper.

INLAND STEEL COMPANY,
By William Wilkartz its duly authorized agent and attorney in fact.

UNITED STATES OF AMERICA,
District of Indiana.
STATE OF INDIANA,
County of Marion. } *ss.*

William Wilhartz being first duly sworn on oath deposes and says that he is the duly authorized agent and attorney in fact in this behalf of the above named petitioner. That he has read the above and foregoing petition by said petitioner subscribed and knows the contents thereof and that said petition is true in substance and in fact except as to the matters therein alleged to be upon information and belief and as to those matters, this affiant, believes them to be true.

Said affiant makes this affidavit as the duly authorized agent and attorney in fact of said petitioner herein.

WILLIAM WILHARTZ.

Subscribed and sworn to before me this 7th day of February, A. D. 1903. M. H. PEACOCK,
Notary Public.

Commission expires April 19, 1906.

And afterwards, to-wit: upon said 11th day of February, 1903, before the Honorable Albert B. Anderson, judge of said court, the following further proceedings in the above entitled matter were had, to-wit:

Comes now the Inland Steel Company, petitioner in bankruptcy herein, which having filed its petition to have M. Zier & Company declared a bankrupt, now files its verified petition alleging that an emergency exists for the immediate appointment by the court of a Receiver herein, to take charge of the property and effects of said M. Zier & Company pending the hearing of said petition and the appointment of a trustee in bankruptcy herein. And the court being advised after due consideration, now finds that the prayer of said petitioner ought to be granted and that a Receiver ought to be appointed to take charge of the property and effects of said M. Zier & Company, previous to the hearing of said petition and the appointment of a trustee herein.

It is therefore considered and ordered by the court that Frederick D. Connor be and he is hereby appointed as receiver herein of the property of said M. Zier & Company, with authority to take charge and possession of all the same, and particularly the goods, wares and merchandise, books, papers and effects, of or belonging to said M. Zier & Company, located at the city of New Albany, Floyd County, Indiana, and now in the hands of the New Albany Trust Company as receiver of said M. Zier & Company appointed by the Floyd Circuit Court, of Floyd County, Indiana. And said Receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said city of New Albany, together with all the tools, machinery, appliances, material and finished products within and about said plant at said city of New Albany, which plant is located at the corner of Pearl and Oak Streets

of said city, and all other property of said M. Zier & Company wheresoever found and situated.

It is further ordered and adjudged by the court that the New Albany Trust Company be and it is hereby required to deliver up to said Frederick D. Connor, as Receiver, all the said property and effects of said M. Zier & Company now in its possession and to refrain hereafter from interfering in any way with the said Receiver's possession and control of the same.

It is further ordered that before entering upon the duties of his said trust herein, the said Frederick D. Connor shall execute to the clerk of this court, and file with the clerk of this court, a bond and sureties to the approval of this Court in the sum of Ten Thousand Dollars (10,000) for the faithful discharge of his duties as such Receiver and take the oath required by law of said office.

And afterwards, to-wit: upon said 11th day of February, 1903, The Inland Steel Company, by George H. Hester, its solicitor, filed its supplemental petition herein, in the words following, to-wit:

The petitioner herein, the Inland Steel Company, for further and supplemental petition herein, and as additional acts of bankruptcy committed by the said M. Zier & Company avers:

That on or about the 30th day of December, 1902, and previous to the filing of the original petition herein, on the 6th day of February, 1903, the said M. Zier & Co. was made the defendant in an action brought in the Floyd Circuit Court, in Floyd County, Indiana, by Joseph T. Ryerson & Son, in which the said Joseph Ryerson & Son prayed for a Receiver to take charge of the property and effects of the said M. Zier & Company; that the said M. Zier & Co. upon the filing of said action immediately appeared thereto waiv-

ing services of summons therein and consented to the appointment by the Floyd Circuit Court of the New Albany Trust Company as the receiver of its property and manufacturing establishment; that the said receiver was thereupon so appointed by the Floyd Circuit Court, and immediately took charge of all the property of said M. Zier & Co., and ever since said time said New Albany Trust Company as such receiver has been in complete charge of said property operating the same by the consent of said M. Zier & Co., and under orders of the Floyd Circuit Court; that said New Albany Trust Company as such receiver is represented by W. W. & J. R. Watts, Attorneys at Law, of Louisville, Ky., who are also the attorneys for the said Jos. T. Ryerson & Son, and who are procuring orders from the Floyd Circuit Court for the government of the matters of the said receiver; that said receiver is now under the orders of said court operating the manufacturing plant and boiler works of said M. Zier & Co. at the city of New Albany, and the petitioner fears that he is doing so in the interest of the said Jos. T. Ryerson & Son, and against the interest of the other creditors herein. That said receiver was appointed and put in charge of the property of the said M. Zier & Co. by the said Floyd Circuit Court because of the gross insolvency of the said M. Zier & Co.

INLAND STEEL CO.,
By George H. Hester,
their attorney.

STATE OF INDIANA, }
County of Marion. } *ss.*

George H. Hester being duly sworn on his oath says that matters stated in the foregoing petition are true as he verily believes.

GEORGE H. HESTER.

Subscribed and sworn to before me this 11th day of February, 1903.

NOBLE C. BUTLER,
Clerk of the U. S. District Court.

And afterwards, to-wit: on the 17th day of February, 1903 before the Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above entitled matter were had, to-wit:

This cause coming on now to be heard upon the petition of Frederick D. Connor, filed herein on the 16th day of February, A. D. 1903, for the instruction of the court concerning the property and assets of said M. Zier & Company, which are now in the possession of the New Albany Trust Company, as receiver of the Floyd Circuit Court, in a suit therein pending against said M. Zier & Company, because of their insolvency; and the petitioning creditors in this cause and said Connor, receiver as aforesaid, being now present and represented by George H. Hester and William Wilhartz, their solicitors, and said New Albany Trust Company, receiver as aforesaid, being now present and represented by Henry E. Jewett, its Vice President, and by William W. Watts, its solicitor, and after argument by counsel, the said New Albany Trust Company, as receiver of the Floyd Circuit Court, by its said Vice President, having voluntarily offered and agreed, by and with the consent and approval of said William W. Watts, its solicitor in open court, to surrender full and immediate possession and control of the property and assets of said M. Zier & Company, in its possession or under its control, as receiver of the Floyd Circuit Court, to said Connor, as receiver of this court, upon the presentation by him to said New Albany Trust Company of a certified copy of the order for his

appointment as such receiver heretofore made by this court. It is now hereby ordered by the court that said Connor receiver as aforesaid, forthwith present a certified copy of the order for his appointment as such receiver to the said New Albany Trust Company, and immediately thereupon take full possession and control of the property and assets of said M. Zier & Company that are now in the possession or under the control of said New Albany Trust Company as receiver of the Floyd Circuit Court.

And afterwards, to-wit: on the 21st day of February, 1903, Frederick D. Connor Receiver of said M. Zier & Company, filed his petition herein, in the words and figures following, to-wit:

The undersigned, Frederick D. Conner, heretofore appointed as receiver, by this court, to take charge of the property and effects of the said M. Zier & Company, respectfully shows to the court:

That subsequent to the order made by the court herein, on the 17th day of February, 1903, directing the petitioner as receiver to present a certified copy of said order for his appointment as such receiver to the New Albany Trust Company, and immediately thereupon take full possession and control of the property and assets of M. Zier & Company, then in the possession and under the control of the said New Albany Trust Company, as receiver of the Floyd Circuit Court, and in obedience to the terms of said order, the said petitioner did on the 19th day of February, 1903, present to the New Albany Trust Company a certified copy of the said order for his appointment as such receiver, and demanded of said New Albany Trust Company as receiver that it turn over to him the full possession and control of all the property and assets of M. Zier & Company then in its possession as receiver of the Floyd Circuit Court; that

thereupon the said Trust Company, by and through Henry E. Jewett, its vice-president, submitted to the petitioner a certified copy of a petition filed by said receiver before the Floyd Circuit Court in chambers, stating that it was ready and willing to turn over to the petitioner the property and assets of said M. Zier & Company in its hands as receiver and further stating that it had not yet been able to make up its accounts as receiver, and praying for an order of said court authorizing it to turn over to this petitioner the property and assets of said M. Zier & Company now in its hands, together with any balance in cash which might remain after such statement of its accounts shall be made up and settled, and asking leave of court to resign as receiver of said M. Zier & Company; which said certified copy of petition is filed with this petition marked Exhibit "A," and made a part hereof; that said New Albany Trust Company, by said Henry E. Jewett, its vice-president, delivered to this petitioner a communication asking that the petitioner defer action until the said New Albany Trust Company could render its accounts and have the same passed on by the Floyd Circuit Court.

The petitioner further represents that he thereupon declined to grant further time, but demanded immediate possession of all the property and assets of said M. Zier & Company in the hands of said New Albany Trust Company, as receiver, and that the said New Albany Trust Company by said Jewett, its vice-president immediately turned over to this petitioner the custody of the building and plant of the said M. Zier & Company, within which is contained all of the property of said M. Zier & Company, excepting certain books and cash belonging to it; that thereupon the petitioner immediately proceeded to take possession of the tools, machinery, appliances, assets and all the property

contained in the manufacturing plant of said M. Zier & Company, which this petitioner believes embraced all of the property of said M. Zier & Company, excepting said books and cash in the possession of said New Albany Trust Company, receiver; that the petitioner thereupon put in charge a day-watchman to hold possession of said property during the day and a night-watchman to hold possession thereof during the night, and so retained possession of said plant until the 20th day of February 1903, at about 7.30 P. M.

The petitioner further says that on the 20th day of February 1903, at about 7.00 P. M. possession of said manufacturing plant and all the property of said M. Zier & Company was demanded of him by Charles D. Kelso, of New Albany, Indiana, as receiver appointed by the Floyd Circuit Court, in place of the New Albany Trust Company, then removed as receiver of said M. Zier & Company; that said demand was refused by this petitioner; that thereupon the petitioner was served by Raymond J. Morris, sheriff of Floyd County, Indiana, and Claude Citizen, Deputy Sheriff of said Floyd County, with a certified copy of on order of the Floyd Circuit Court made in the matter of the receivership of M. Zier & Company, pending before it, a copy of which is filed herewith marked Exhibit B and made part hereof; that at the same time the petitioner was served with a writ issued by the Floyd Circuit Court on the 20th day of February, 1903, to the Sheriff of Floyd County requiring him to forthwith take from the petitioner possession of the boiler plant of M. Zier & Company, together with all the tools, machinery, appliances, books, papers, accounts, choses in action and all other property belonging to said M. Zier & Company and finally the premises of said M. Zier & Company, at its plant in the City of New Albany, Indiana, a copy of which order is filed herewith marked Exhibit C, and made part hereof.

The petitioner further says that thereupon the said Raymond J. Morris, sheriff of said County of Floyd, forcibly took possession, from this petitioner and his agents and employes in charge of said manufacturing plant of said M. Zier & Company, of said property and assets of M. Zier & Company and delivered the same over to Charles D. Kelso, appointed as receiver of said property by the Floyd Circuit Court as aforesaid; that thereupon said Charles D. Kelso immediately took possession of said plant and of such property, and that he, the said Kelso, together with his agents and employes, are now in the possession of the same and restraining this petitioner from the possession thereof and the exercise of any authority over the same.

That this petitioner believes the above stated proceedings were procured to be had by William W. Watts, Esq., of Louisville, Ky., who during the continuation of the New Albany Trust Company, as receiver of M. Zier & Company, represented said Trust Company as such; that said Charles D. Kelso is now represented by one D. A. Sachs, Esq., of Louisville, Ky., an attorney-at-law, and that the petitioner believes that said Sachs also assisted in procuring the orders of the said Floyd Circuit Court above set out, and the petitioner further says that he verily believes the forcible removal of said property from his possession and control as receiver appointed by this court as aforesaid, was brought about by the joint action and efforts of said Charles D. Kelso, as receiver, and Charles D. Kelso, individually, and William W. Watts, as attorney for said New Albany Trust Company, and D. A. Sachs, attorney for said Charles D. Kelso, receiver.

Wherefore the premises being considered, the petitioner prays the court that the said Charles D. Kelso, as receiver of said M. Zier & Company, and Charles D. Kelso, indi-

vidually, Raymond J. Morris, as sheriff of said Floyd County, Indiana, and Raymond J. Morris, individually, Claude Citizen, as deputy sheriff of said Floyd County, and Claude Citizen, individually, Thomas Smithwick, as custodian of said plant of M. Zier & Company, and Thomas Smithwick, individually, William W. Watts, as attorney for said New Albany Trust Company, and D. A. Sachs, as attorney for said Charles D. Kelso, Receiver, be enjoined and restrained from in any manner taking or keeping from the possession of this petitioner said property and estate of said M. Zier & Company; that they may be required and directed to immediately redeliver to this petitioner as such receiver said property and estate so unlawfully taken from them, and that they may be cited to appear before this court at a time fixed by this court and show cause why they should not be punished for contempt for the violation of the orders of this court heretofore made herein.

And the petitioner further prays for directions as to what he shall do with respect to said property.

FREDERICK D. CONNER.

STATE OF INDIANA, }
County of Marion. } *ss.*

Frederick D. Conner, being duly sworn, on his oath, deposes and says, that the matters stated in the foregoing petition are true as he verily believes.

FREDERICK D. CONNER.

Subscribed and sworn to before me this 21st day of February, 1903.

NOBLE C. BUTLER,
Clerk.

FRED D. CONNER,
Receiver U. S. District Court,
District of Indiana.

In view of your demand that as receiver of the Floyd Circuit Court we deliver you the property of M. Zier & Company, as such receiver will state.

We this morning filed before Judge of the Floyd Circuit Court in chambers, report, a copy of which is attached hereto. Thereupon the Judge stated orally that he wanted us to hold the property until our accounts as receiver were rendered and passed upon. We think this might be done tomorrow, and if you are willing to defer action until then it will relieve us of embarrassment in the premises.

On the other hand if you insist on immediate surrender of the property to you, we are bound to say that we believe that to carry out in good faith the understanding with the Honorable Judge of the United States District Court of Indianapolis and our vice-president, H. E. Jewett, we ought to surrender the property to you at once.

Very truly yours,
THE NEW ALBANY TRUST COMPANY,
By H. E. Jewett,
Vice President

February 19th, 1903.

STATE OF INDIANA, } *ss.*
Floyd County. }

Joseph T. Ryerson & Son, }
vs. }
M. Zier & Company. }

To the Honorable Judge of the Floyd Circuit Court, in Chambers:

The New Albany Trust Company, Receiver in the above entitled cause, respectfully shows to this court that in pursuance of the order made by this court it appeared before

Judge A. B. Anderson, of Indianapolis, Judge of the United States District Court for the District of Indiana, on Monday, the 16th day of February, 1903, and that upon the hearing in that court this receiver stated to the Honorable Judge of said United States District Court, that it was ready and willing to turn over to the receiver appointed by the Honorable Federal Court in the bankruptcy proceedings of M. Zier & Company then pending in said court, the property and assets of said M. Zier & Company in the hands of this receiver, and this receiver further states that it has not yet been able to make up its accounts as receiver, but that it is now preparing the same to be submitted to this court; but that it is ready to turn over to Frederick D. Conner, the receiver appointed by the United States District Court in bankruptcy, all of the property of the said M. Zier & Company, and this receiver now prays for an order of this court authorizing him to turn over to said Frederick D. Conner, the property and assets of said M. Zier & Company now in its hands, together with any balance in cash which may remain after such statement of its accounts shall be made up and settled, and that upon delivering said property to said Frederick D. Connor, receiver aforesaid, it be discharged from all further liability for or on account of said property or assets of said M. Zier & Company so turned over to such Connor as such receiver.

This receiver further asks that upon making up and presentation of its account for allowance to this court, that it be allowed to resign as receiver of the said M. Zier & Company and that upon the approval of its accounts its said resignation be accepted by this court, and that it be fully and finally discharged as such receiver.

All of which is respectfully submitted,

THE NEW ALBANY TRUST COMPANY,

By Henry E. Jewett, *Vice President.*

Henry E. Jewett, being duly sworn on his oath says that he is the vice-president of the New Albany Trust Company, and makes this affidavit on behalf of said company; that the statements contained in the foregoing petition are true in substance and fact as he verily believes.

HENRY E. JEWETT.

Subscribed and sworn to before me this 19th day of February, 1903.

CHARLES B. SCOTT,
Clerk F. C. C.
By William Rouff,
Deputy.

STATE OF INDIANA, } *Sct.:*
Floyd County. }

Be it remembered, that at the January Term, 1903, of the Floyd Circuit Court, on the 14th day of February, 1903 before the Hon. William C. Utz, Sole Judge, among other the following proceedings were had, to-wit:

Joseph T. Ryerson & Son,
Plaintiff.
vs.
M. Zier & Co.,
Defendant.

ORDER ON PETITION OF RECEIVER CONCERNING BANKRUPTCY PROCEEDINGS.

Came the New Albany Trust Company, receiver herein and files its petition herein showing to the Court divers matters concerning the filing of a petition in the District Court of the United States for the District of Indiana, by the Inland Steel Company, John C. Thruston and Dey Time Register Company, as creditors of said M. Zier & Company

in involuntary bankruptcy and a petition seeking the appointment of a receiver therein to take charge of the assets in this Court's possession through its receiver herein, whereupon such an order was entered, Frederick D. Connor being named as receiver and being directed to take possession of such assets, and further showing to the Court that the record in said cause disclosed the fact that said court was not fully advised as to the various orders, injunctions, restraining orders and estoppels by entries of appearance and participation in these proceedings by divers creditors of this estate, including said Inland Steel Company and Dey Time Register Company, petitioning creditors therein, and further showing that because of the immediate adjournment of this court, and its convention not being again had until March 9, 1903, and the operation of the plant herein made by and with the advice of much more than a majority in number and amount of the creditors herein, including said Inland Steel Company, such petitioning creditor in bankruptcy and this court now, after having read said petition and having considered the various exhibits referred to in such receiver's petition, and the entire record of this cause and being fully advised, is of the opinion that had said District Court of the United States for the District of Indiana been fully advised of the divers matters herein occurring it would not have entered such order as has been therein entered; that because of the comity existing between the courts of this Country, State and Federal, its order would at most have directed any attempt to take the assets herein to be by intervention in this cause and that only, and being of the opinion that said District Court will coincide with these views and a state of necessity for the entry of this order existing, it is now ordered that the Receiver herein conduct the operation of the plant herein as hertofore ordered and

directed; that said Inland Steel Company, John C. Thruston, Dey Time Register Company, Frederick D. Connor, individually and as Receiver, and Henry C. Pettit, individually and as Marshal of the District Court of the United States for the District of Indiana, and all others in any capacity, be and they are hereby enjoined from in any wise molesting, interfering with, or attempting by legal process or otherwise to take possession of the estate of M. Zier & Co., in the hands of this Court through its Receiver herein, and in the hands of said Receiver until the further order of this Court and except by intervention in this cause.

And said Receiver is now hereby ordered and directed, through its attorney, to proceed to Indianapolis, Indiana, and there, by a limited appearance and by protestation against appearance, only, by petition upon such appearance only, lay before said District Court of the United States for the District of Indiana the facts with regard to the matters herein, said injunction, restraining order and said estoppels, and to suggest to said Court the orders of this Court and the fact that had it been fully informed, as is believed by this Court, its order with respect to the assets herein would, at the most, have been a direction to make an application to this Court at the proper time and in the proper way, for delivery of the said assets to such District Court's receiver or trustee, after proper disposition and settlement of the matters herein.

The Court being further advised and on motion of said New Albany Trust Company, Receiver, it is ordered that the Inland Steel Company, John C. Thurston, The Dey Time Register Company, be and they are hereby ordered to appear and show cause why they have prosecuted said petition in involuntary bankruptcy, why they have filed said petition seeking the appointment of a receiver for the assets of this

estate, why they have sought to take from this court the assets of this estate, why they should not be punished for contempt for disobeying the orders of this Court without first obtaining leave of the Court by petition of intervention or order in this cause. And they are hereby commanded to show such cause on or at the time of the first day of the next term of this Court. And service of a copy of this order upon Jacob Hoerter and George H. Hester because of their apparent representation of said petitioning creditors and then said co-counsel for the purpose of this show cause order shall be deemed sufficient for the service thereof on all said persons and parties.

And it is further ordered that this Court shall retain such control of said matters as may be necessary for the purpose of the entry of any and all such orders as may be deemed proper and necessary herein and therein.

And Jacob Herter and George H. Hester such attorneys now being present in court and Hester having been heard in opposition to the said petition and having notice of the entry of this order, It is now ordered that no other or further notice hereof need be given the said Inland Steel Co., John C. Thurston, and Dey Time Register Co., petitioners in said bankruptcy proceedings. And comes now C. D. Kelso and asked leave of the Court to withdraw as the attorney of record for the following named parties: United Gas and Electric Company; United States Tube Company, Indiana Water Company and Simon E. David and the Court now permits the said C. D. Kelso to withdraw herefrom."

STATE OF INDIANA, }
County of Floyd. } *ss.*

I, Charles B. Scott, Clerk of the Floyd Circuit Court, within and for the County of Floyd and State of Indiana

do hereby certify that the above and foregoing is a full, true and complete copy of an entry of record and order of Court made in the receivership of M. Zier & Company, and in the case of Joseph T. Ryerson & Son versus M. Zier & Company, as the same appears of record in my office.

Witness my hand and the seal of said Court hereto affixed at New Albany, Indiana this 20th day of February 1903.

CHARLES B. SCOTT,
Clerk Floyd Circuit Court.
By William Ruoff,
Deputy.

[SEAL.]

(Copy.)

STATE OF INDIANA.

To the Sheriff of Floyd County, Greeting:

By order of the Honorable William C. Utz, Judge of the Floyd Circuit Court, which order was made in Vacation, you are hereby commanded and required to forthwith take from Frederick D. Connor the possession of the boiler plant of M. Zier & Co. situated on the northeast corner of Pearl and Oak Streets in the City of New Albany, Indiana together with all the tools, machinery, appliances, books, papers, accounts, choses in action and all other personal property belonging to said M. Zier & Co. and found in the premises of said M. Zier & Co. at said point in the City of New Albany, Indiana being the same property wrongfully and without leave of this Court surrendered to said Frederick D. Connor by the New Albany Trust Company formerly receiver of M. Zier & Co. and you are further required by the order of said Judge of said Court to forthwith deliver said above described property to Charles D. Kelso receiver of said M. Zier & Co. and of this writ make due service and immediate return thereof.

Witness Charles B. Scott, Clerk of the Floyd Circuit Court and the seal hereto affixed at the Court House in the City of New Albany this 20th day of February, 1903.

CHARLES B. SCOTT,
Clerk Floyd Circuit Court.
By William F. Ruoff,
[SEAL.] *Deputy.*

And afterwards, to-wit, on the 21st day of February, 1903, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings were had in the above entitled cause, to-wit:

This cause coming on now to be heard on the petition of Frederick D. Connor, receiver of this court, filed herein on the 21st day of February, 1903, for an order of injunction restraining Charles D. Kelso, as receiver of M. Zier & Company under appointment of the Floyd Circuit Court, Charles D. Kelso, individually, Raymond J. Morris, Sheriff of Floyd County, Indiana, Raymond J. Morris, individually, Claude Citizen, deputy sheriff of Floyd County, Indiana, Claude Citizen, individually, Thomes Smithwick, custodian of the property of said M. Zier & Company under alleged appointment of Charles D. Kelso, as receiver of the Floyd Circuit Court, Thomas Smithwick, individually, William W. Watts, and D. A. Sachs, individually, and each of them, from detaining the possession of the property of said M. Zier & Company from said Frederick D. Connor, receiver of this court, and for an order requiring said parties and each of them to re-deliver up to said Frederick D. Connor, receiver of this court, all of said property, and the Court having considered said petition and it being shown to the satisfaction of the court that the matters stated therein are true,

It is now ordered by the Court that Charles D. Kelso, as receiver of M. Zier and Company under the appointment of

the Floyd Circuit Court, and individually, Raymond J. Morris, as sheriff of Floyd County, Indiana, and individually, Claude Citizen, deputy sheriff of Floyd County, Indiana, and individually, Thomas Smithwick, custodian of the property of said M. Zier and Company under an alleged appointment of Charles D. Kelso as receiver of the Floyd Circuit Court and individually, William W. Watts and D. A. Sachs, as attorneys for Charles D. Kelso, receiver as aforesaid, and individually, and each of them be and they are hereby required to appear before this court at Indianapolis in this District on Wednesday the twenty-fifth day of February, 1903, at nine o'clock, a. m. of said day and show cause if any they have why they should not re-deliver the property of M. Zier and Company into the possession and custody of Frederick D. Connor, as receiver of this court, and in the meantime, and until the further order of this court that they and each of them, their agents, attorneys, servants and employees, and each of them be and they are hereby restrained and prohibited from in any way interfering with said property, or making any disposition of the same.

It is further ordered by the Court that Charles D. Kelso as receiver of M. Zier and Company under the appointment of the Floyd Circuit Court, and individually, Raymond J. Morris, sheriff of Floyd County, Indiana, and individually, Claude Citizen, deputy sheriff of Floyd County, Indiana, and individually, Thomas Smithwick, custodian of the property of said M. Zier and Company under an alleged appointment of Charles D. Kelso as receiver of the Floyd Circuit Court, William W. Watts and D. A. Sachs as attorneys for Charles D. Kelso as such receiver, and individually, and each of them, are hereby required to appear before this court at Indianapolis in this District on Wednesday the twenty-fifth day of

February, 1903, at nine o'clock a. m. of said day, and then and there show cause why they should not be punished for contempt for the violation of the orders of said court heretofore made herein.

It is further ordered by the court that the Marshal of this District shall serve each of the parties named in the foregoing order by the delivery of a copy thereof to them and each of them.

And afterwards, to wit: on the 25th day of February, 1903, before the Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above entitled matter were had, to-wit:

Raymond J. Morris and Claude Sittason appear in person and by Evan B. Stotsenberg, their attorney, and Charles D. Kelso and Thomas Smithwick appear in person and by William A. Ketcham, their attorney, and file their several answers to the petition of the Receiver for orders against them, and the Receiver files his several replies thereto.

And afterwards, to-wit: on the 25th day of February, 1903, aforesaid, before the Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

It is ordered by the court, that, so far as the proceedings upon the petition of the Receiver filed on the 21st day of February, 1903, are instituted against the parties named therein for a contempt of this court, they shall be docketed in this court at Indianapolis and henceforth conducted under the title of the United States against the parties aforesaid:

UNITED STATES OF AMERICA, }
District of Indiana. } *ss.*

I, Noble C. Butler, clerk of the District Court of the United States within and for said District, do hereby certify

that the above and foregoing is a full and true and complete transcript of the record and files in the matter of M. Zier & Company, alleged bankrupt, except the petition of Frederick D. Connor, Receiver in said matter, filed on the 16th day of February, 1903, and the order of adjudication in bankruptcy, entered on the 9th day of March, 1903, as fully as the same appear upon the records and files now in my office.

WITNESS my hand and the seal of said Court, at Indianapolis in said District, this 11th day of March, A. D. 1903.

NOBLE C. BUTLER,
Clerk.

UNITED STATES DISTRICT COURT,
FOR THE DISTRICT OF INDIANA.

IN THE MATTER OF M. ZIER & CO. ALLEGED BANKRUPT
NO. 37 IN BANKRUPTCY, AND

UNITED STATES,
vs.
Charles D. Kelso,
William W. Watts,
and others. } No. 6377.

THE SEPARATE RESPONSE AND PLEAS OF WILLIAM W. WATTS TO THE RULE AND INFORMATION HEREIN:

1. The respondent and defendant, William W. Watts, says he is not guilty of the alleged contempt stated in the said rule and information, or either of them.

2. Denying that he committed any act or advised or consented to the commission of any act in disobedience of any order of the District Court of the United States for the

District of Indiana entered or made by said Court in the matter of M. Zier & Company, bankrupts, case No. 37 pending in said Court at New Albany, Indiana, and denying further that he did in any way, either directly or by aiding, abetting, or advising, forcibly, or in any other way take from Frederic D. Connor, Receiver in said bankrupt proceedings, the property, goods and chattels of said M. Zier & Co., bankrupt, or any of them, or in any way, either directly, or by aiding, abetting, or advising withhold the custody of the said property, goods and chattels, or any of them, from the said Frederic D. Connor, Receiver: Yet the defendant and respondent says that the orders of the said District Court of the United States made in said bankrupt proceedings ordering and directing said Frederic D. Connor, Receiver, to take said property, goods and chattels of M. Zier & Co. into his custody, were and are void, because he says the said court had no jurisdiction to make said orders, or either of them, and the making of said orders, and each of them was beyond the power of the said Court; and the possession of said property by said Frederic D. Connor, Receiver, was wrongfully and unlawfully obtained by him, and the re-taking of said property from the possession of said Receiver, under and pursuant to the orders and writ of the Floyd County (Indiana) Circuit Court, was a lawful and proper taking. All of which will appear from the affirmative statements of the particular facts hereinafter made.

3. This defendant and respondent further states that on the 30th day of December, 1902, Joseph T. Ryerson & Son filed their certain complaint in the Floyd Circuit Court of the State of Indiana against M. Zier & Co., defendant, and on the same day caused to be issued by the Clerk of said Floyd Circuit Court, and there was duly issued by the said

Clerk a summons upon the said complaint against M. Zier & Co., which said summons on the same day of its issuance came duly to the hands of the Sheriff of Floyd County, Indiana, and was by him on the same day duly served on the defendant, M. Zier & Co. The said complaint of Joseph T. Ryerson & Son against M. Zier & Co. so filed in the Floyd Circuit Court averred an indebtedness of $15,000 of the said defendant, M. Zier & Co., to the plaintiff, Joseph T. Ryerson & Son, upon certain promissory notes stated in the complaint, and the said complaint prayed judgment in favor of said plaintiffs against said defendants in said sum of money.

The said complaint averred these further facts, that the defendant, M. Zier & Co., is a corporation duly created and organized under the laws of the State of Indiana, and authorized to and was carrying on as such corporation the business of manufacturing boilers in the City of New Albany, in the County of Floyd and State of Indiana; that the said business was a large business; that the said defendant was indebted in the aggregate to divers persons in at least the sum of $65,000; that it was unable to meet its said obligations; that its creditors were threatening to enter suits against it; that the property and assets of said defendant corporation consisted of a manufacturing plant, which was in operation, and which was employed in filling unfinished orders, and working on unfinished contracts; that the defendant was without means or money with which to continue the operation of its said business, and that if suits should be instituted against it, and its property seized upon executions or attachments, the assets and property of the defendant would be dissipated and its plant rendered much less valuable to its creditors generally than if the said property were properly preserved and continued as a going concern; and

that the property, funds and profits of the business of the said defendant were in danger of being lost and materially injured and destroyed, unless a Receiver were immediately appointed to take charge of said property and hold the custody and possession thereof, and preserve the same for such disposition thereof as the Court might adjudge.

The said Floyd Circuit Court, of the State of Indiana, and the Judge thereof in vacation were and are by the Statutes and laws of the State of Indiana authorized and empowered to appoint Receivers of and for insolvent corporations and their property and assets; that the said Floyd Circuit Court is a constitutional Court, and the Judge thereof a constitutional officer, made such by the Constitution of the State of Indiana, and the said Floyd Circuit Court is by the Constitution and laws of the State of Indiana a Court of general, original jurisdiction.

On the same day on which said complaint was as aforesaid filed in the Floyd Circuit Court, and after it was filed and after the issuance of summons thereon, the plaintiffs in said action of Joseph T. Ryerson & Son, after due notice thereof to the defendant, M. Zier & Co., moved the Hon. William C. Utz, who was and is the duly elected, commissioned, qualified and acting Judge of the said Floyd Circuit Court, to appoint a Receiver of the property and assets of the defendant, M. Zier & Co., in pursuance of the prayer of the said complaint. The said defendant, M. Zier & Co., appeared to said motion and, after due consideration thereof, the said Judge sustained said motion and appointed by his order, duly made and entered, the New Albany Trust Company as Receiver of the said defendant, M. Zier & Co., and of all of its assets and property. The said New Albany Trust Company is a corporation created and organized under the laws of the State of Indiana with full corporate powers,

among other things to act as Receiver under the appointment of Courts. That the said New Albany Trust Company immediately upon its said appointment duly qualified as such Receiver, and then and there took upon itself the duties of said Receivership, and took the oath as required by law and by said order of appointment. That immediately after its said appointment and qualification as Receiver aforesaid, and on the same day on which it was appointed as such Receiver, and under the order of the said Floyd Circuit Court, the said New Albany Trust Company, as such Receiver, took into its possession all of the said property and assets of the said defendant, M. Zier & Co, That after its said appointment, the said Receiver, made out an inventory of the property of the said M. Zier & Co., which it had taken possession of under its said appointment as such Receiver on the 30th day of December, 1902, and caused the same to be appraised, which inventory and appraisement were filed in the said Floyd Circuit Court in said action, and said inventory shows, and it is true, that the appraised value of said property was about $28,500. That on the 16th day of January, 1903, the said Receiver filed in the Floyd Circuit Court its report and petition wherein it sought the advice and instruction of said Court with respect to the continuance of the operation of said plant and prayed the Court that a time be fixed for the hearing of said report and petition, and further prayed that said M. Zier & Co. and its officers, and the creditors of said M. Zier & Co., be notified by mail and by publication of the time and place of the hearing of said report and petition, and that the said creditors be requested to appear and make known their objections, if any, to the continuance of the operation of the plant of the said M. Zier & Co. Said petition further prayed that all creditors of M. Zier & Co. be required to prove their

claims against said estate by filing proof thereof with the said Receiver, or by intervening petition in said case, and that all creditors and persons be restrained and enjoined from prosecuting suits involving said assets in any manner except by intervening petition in said action.

And thereupon, upon consideration of said petition, the Floyd Circuit Court made a certain order on the 16th day of January, 1903, directing said Receiver to continue the operations of the said business of the said M. Zier & Co. and to carry out certain contracts for manufacturing boilers and appliances, which were stated in said order, and further directed that a hearing be had of the creditors of the said M. Zier & Co. on the 24th day of January, 1903.

On the 24th day of January, 1903, the time fixed for the hearing of the said creditors of the said defendant, it was made to appear to the said Court by the said Receiver that all of the creditors of the said M. Zier & Co., as shown by the books of the said M. Zier & Co., had been notified by the said Receiver to be present on said 24th day of January, 1903, to be heard on said matters, and on said day a large majority in number and amounts of the creditors of the said M. Zier & Company appeared in said Court, among whom was the Inland Steel Company, and were heard upon the said petition of said Receiver, and thereby they became and were and are parties to said action; and after said hearing and the Court being sufficiently advised, the said Court ordered and directed that the said Receiver carry out and complete all unfinished contracts of the said defendant, M. Zier & Co., and the said Court gave to said Receiver power and authority to purchase new material for this purpose, but ordered said Receiver not to make any new contracts, and gave to said Receiver divers other orders and directions, and further ordered that all creditors and other persons be

enjoined and restrained from prosecuting any claims or suits against said estate in the hands of said Receiver except by intervening in said cause, or by first obtaining leave of said Court in said action.

The respondent and defendant further states that on the 6th day of February, 1903, the Inland Steel Company, a creditor who had appeared and was a party to said action in said Floyd Circuit Court, and John C. Thruston and John Dey doing business as the Dey Time Register Company, filed their certain petition in involuntary bankruptcy in the District Court of the United States for the District of Indiana against M. Zier & Co. alleging certain acts of bankruptcy committed by M. Zier & Co. and praying that the said M. Zier & Co. be adjudged a bankrupt. The said petition in bankruptcy further alleged "That, under certain proceedings in a State Court, a Receiver has been appointed of the assets of said corporation, M. Zier & Co., and is attempting to collect assets of said estate and incurring petty expenses in and about said estate which must be borne by the creditors thereof, and your petitioners aver that it is absolutely necessary for the preservation of said estate of M. Zier & Co. for the benefit of all of its creditors that a Receiver in bankruptcy be appointed herein forthwith."

On the 11th day of February, 1903, the said Inland Steel Company filed in said proceedings in bankruptcy its certain petition in which it stated among other things "That at the instance of said Joseph T. Ryerson & Son, a Receiver has been appointed by the Floyd Circuit Court of Floyd County, Indiana, to take charge of the assets of said alleged bankrupt; that the New Albany Trust Company is the Receiver so appointed, and that Harry E. Jewett who is the attorney for said M. Zier & Co. is also the Vice President of said New Albany Trust Company; that said Receiver

is now running the business of M. Zier & Co. and is completing certain contracts and for that purpose has employed a large number of men in the manufacturing establishment of said M. Zier & Company and has placed in charge of said plant one Michael Zier who is the Vice President and Treasurer of said alleged bankrupt; that said Michael Zier is wholly incompetent for said business; that he is wholly unfamiliar with bookkeeping and necessary office work which is essential to the safe conduct of said business, and your petitioner avers if said Receiver is permitted to remain in charge that it would result to the injury and detriment of such of the general creditors of said M. Zier & Co. who are entitled to participate in said bankrupt estate.

"Your petitioner further states that W. W. and J. R. Watts, attorneys at Louisville, Ky. are the attorneys for said Joseph T. Ryerson & Son in said proceedings wherein the said New Albany Trust Company was appointed Receiver and that said W. W. & J. R. Watts are also attorneys for said Receiver, and your petitioner fears that said Receiver is friendly to said Joseph T. Ryerson & Son and said alleged bankrupt to the detriment of the creditors at large of said alleged bankrupt. Your petitioner further alleges that it is absolutely necessary for the preservation of said estate for the benefit of all the creditors who shall be entitled to participate therein that a Receiver in bankruptcy be appointed herein forthwith to take charge of all the assets of said alleged bankrupt and administer the same under the directions of this honorable court with the usual powers of Receivers in such cases. Wherefore your petitioner prays that a Receiver in bankruptcy be appointed forthwith and that such other and further orders be entered herein as to Your Honor shall seem meet and proper."

And upon the same day, to-wit, on the 11th day of February, 1903, the said District Court of the United States

for the District of Indiana in said bankrupt proceedings, upon consideration of said petition filed by the Inland Steel Company, entered and made an order directing among other things as follows, to-wit: "It is therefore considered and ordered by the Court that Frederick D. Connor be and he is hereby appointed as Receiver herein of the property of said M. Zier & Co. with authority to take charge and possession of all the same and particularly the goods, wares and merchandise, books, papers and effects of or belonging to said M. Zier & Co. located at the City of New Albany, Floyd County, Indiana, and now in the hands of the New Albany Trust Company, as Receiver of said M. Zier & Co., appointed by the Floyd Circuit Court of Floyd County, Indiana. Said Receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said City of New Albany, together with all the tools, machinery, appliances, materials and finished products within and about said plant at said City of New Albany, which said plant is located at the corner of Pearl and Oak Streets in said city and all other property of said M. Zier & Company wheresoever found and situated. It is further ordered and adjudged by the Court that the New Albany Trust Company be and it is hereby required to deliver up to said Frederic D. Connor as Receiver all the said property and effects of said M. Zier & Company now in its possession, and to refrain hereafter from interfering in any way with the said Receiver's possession and control of the same."

And Frederic D. Connor duly accepted said appointment as the Receiver of the District Court of the United States for the District of Indiana in said bankrupt proceedings and duly qualified and executed bond as such as is required in the said order of appointment.

On the 13th day of February, 1903, Frederic D. Connor, as Receiver of the said United States District Court in said

bankrupt proceedings, and acting under the order appointing him as such Receiver, as defendant and respondent was informed and believed, appeared at New Albany, Indiana, and demanded of the New Albany Trust Company that it deliver to him the assets and effects of M. Zier & Co. which it held and had in its possession as Receiver of said Floyd Circuit Court.

The respondent and defendant and the New Albany Trust Company, receiver as aforesaid, believed that the said United States District Court and the Judge thereof were not fully informed of the exact situation and condition of the proceedings in the said Floyd Circuit Court and believed that the said order appointing said Frederic D. Connor receiver of said United States District Court in said bankrupt proceedings was made under a misapprehension of the facts relating to said proceedings and action in the said Floyd Circuit Court, and so believing this defendant and respondent and the said New Albany Trust Company conferred with respect to the demand of the said Frederic D. Connor, Receiver of the said United States District Court that the said property of the said M. Zier & Co. in the hands of said Receiver of said Floyd Circuit Court be turned over to him as Receiver of the said United States District Court, and the result of said conference was that this respondent telephoned to the Judge of the United States District Court for the District of Indiana at Indianapolis, and requested him to direct the said Frederic D. Connor not to proceed further with his demand until this defendant and respondent and the New Albany Trust Company could appear before him and explain to him the exact circumstances and condition of the action of Joseph T. Ryerson & Son against M. Zier & Co., pending in the said Floyd Circuit Court. And the said Judge of the United States District Court stated, or caused

it to be stated over the telephone, that such appearance might be made on the following Monday, to-wit, February 16th, 1903, and did direct the Receiver, Frederic D. Connor, for the time being, to suspend his demand for the possession of said property.

On the 14th day of February, 1903, the said Frederic D. Connor, as said Receiver of the United States District Court, by George H. Hester, as his attorney, appeared in the said Floyd Circuit Court in said action of Joseph T. Ryerson & Son against M. Zier & Co. and filed his verified petition therein, showing his appointment as such Receiver by order of the United States District Court for the District of Indiana and praying said Floyd Circuit Court for an order requiring the said New Albany Trust Company, as Receiver of said M. Zier & Co., to turn over and surrender to him, the said Frederic D. Connor, as Receiver in Bankruptcy the property of the said M. Zier & Co., of which the said New Albany Trust Company, as Receiver of M. Zier & Co. under the orders of the said Floyd Circuit Court was custodian, and thereupon said Frederic D. Connor as such Receiver was made a party to said suit and the matter of said petition was continued until the next term of said Floyd Circuit Court.

The defendant and respondent prepared for the New Albany Trust Company, Receiver of the said Floyd Circuit Court, a petition for advice in which it was stated that Frederic D. Connor had been appointed by the United States District Court in the said bankruptcy proceedings, Receiver for the property and effects of M. Zier & Co., and that the order of appointment directed him to take possession of said property, and stated that in the opinion of the Receiver of the Floyd Circuit Court, namely, the New Albany Trust Company, said order had been made under

some misapprehension, and stated also the fact that the respondent and defendant had telephoned to the Judge of the United States District Court, and that said Judge stated that he would hear the matter on Monday, the 16th day of February, 1903, and requested the said Floyd Circuit Court to authorize the New Albany Trust Company, or its Vice-President, Henry E. Jewett, and this defendant and respondent as its attorney to specially appear in the United States District Court at Indianapolis and make a full and complete explanation of the exact condition of the record in the said action of Joseph T. Ryerson & Son against M. Zier & Co., pending in the said Floyd Circuit Court, and accordingly said petition was filed on the 14th day of February, 1903, and thereupon on said day the said Floyd Circuit Court entered an order among other things authorizing this defendant and respondent and Henry E. Jewett, Vice-President of the New Albany Trust Company to appear before the United States District Court at Indianapolis by way of protestation and specially and present to said Court the exact condition of the said action in the said Floyd Circuit Court. All this was done solely for the purpose of preventing any posisble conflict between the two jurisdictions, and it was believed by this defendant and respondent, and by the said New Albany Trust Company, and by the Judge of the Floyd Circuit Court, that upon such presentation, the United States District Court would rescind its said order appointing said Frederic D. Connor as Receiver and directing him to take possession of said property of M. Zier & Co. Under this authorization, and not otherwise, this defendant and respondent and Henry E. Jewett, Vice-President of the New Albany Trust Company, Receiver of the said Floyd Circuit Court, did appear in the District Court of the United States, for the District of Indiana, at Indianapolis on Monday,

February 16th, 1903, and exhibited to the Court, the said order of the Floyd Circuit Court, authorizing them to appear, and made the said Court a full and complete statement of the condition of the said action of Joseph T. Ryerson & Son against M. Zier & Company in the Floyd Circuit Court.

But so it is that after said explanation and statement had been made and argued by this defendant and respondent, before the Judge of the said United States District Court, which argument and explanation consumed several hours, and continued over from Monday, February 16th, until Tuesday, February 17th, the Judge of the said United States District Court, refused in any way or to any extent to reconsider, modify or set aside his said order appointing Frederic D. Connor, Receiver, and demanded of Henry E. Jewett, as the representative of the New Albany Trust Company, Receiver, to state whether or not he would turn over the property in the hands of the New Albany Trust Company as Receiver aforesaid, to Frederic D. Connor, Receiver, and demanded of this defendant and respondent whether or not he, as counsel for the New Albany Trust Company, Receiver, would advise it to turn over said property to Frederic D. Connor, Receiver. Under these circumstances, and not otherwise, and believing that the said demand of said Judge of the said United States District Court was peremptory, this defendant and respondent, as counsel for the said New Albany Trust Company, stated that he would advise the said New Albany Trust Company to turn over the said property to the said Frederic D. Connor, Receiver.

On the 17th day of February, 1903, this defendant and respondent, and the said Henry E. Jewett, left Indianapolis, and this defendant and respondent was under the impression that it was not necessary to enter any order respecting the proceedings which were had in the United States Dis-

trict Court on the 16th and 17th of February, 1903, with respect to the said explanation and arguments made by this defendant and respondent, and was under the impression that no order would be entered in respect thereto. But this defendant and respondent says that an order was entered, a fact which he learned several days afterwards, which order is as follows:

"This cause coming on now to be heard upon the petition of Frederick D. Connor, filed herein on the 16th day of February, A. D. 1903, for the instructions of the Court concerning the property and assets of said M. Zier & Company, which are now in the possession of the New Albany Trust Company, as Receiver of the Floyd Circuit Court, in a suit therein pending against said M. Zier & Company, because of their insolvency; and the petitioning creditors in this cause and said Connor, Receiver, as aforesaid, being now present and represented by George H. Hester and William Wilhartz, their solicitors, and said New Albany Trust Company, Receiver as aforesaid, being now present and represented by Henry E. Jewett, its Vice President, and by William W. Watts, its solicitor, and after argument by counsel, the said New Albany Trust Company, as Receiver of the Floyd Circuit Court, by its said Vice President, having voluntarily offered and agreed by and with the consent of approval of said William W. Watts, its solicitor, in open Court, to surrender full and immediate possession and control of the property and assets of said M. Zier & Company, in its possession or under its control, as Receiver of the Floyd Circuit Court, to said Connor, as Receiver of this Court, upon the presentation by him to said New Albany Trust Company of a certified copy of the order of his appointment as such Receiver heretofore made by this Court.

"It is now hereby ordered by the Court that said Connor, Receiver as aforesaid, forthwith present a certified copy of the order of his appointment as such Receiver to the said New Albany Trust Company, and immediately thereupon take full possession and

control of the property and assets of said M. Zier & Company, that are now in possession or under control of said New Albany Trust Company as Receiver of the Floyd Circuit Court."

On the 19th day of February, 1903, this defendant and respondent and the New Albany Trust Company, Receiver, appeared before the Judge of said Floyd Circuit Court at New Albany in Chambers, for the purpose of formally reporting to him the result of their appearance before the United States District Court at Indianapolis on the 16th and 17th days of February. This defendant and respondent as attorney for the New Albany Trust Company, then filed before the said Judge of said Floyd Circuit Court a written petition and motion which was signed by him as attorney as follows, to-wit:

"*To the Honorable Judge of the Floyd Circuit Court in Chambers:*

"Respectfully represents the New Albany Trust Company, Receiver herein and W. W. Watts, one of its attorneys herein, that pursuant to the order of the Court herein entered on Saturday February 14, 1903, they on the 16th day of February, 1903, at Indianapolis, Ind., filed before the District Court of the United States for the District of Indiana, A. B. Anderson, Judge, presiding, a statement of the New Albany Trust Co., Receiver, under the order of this Court setting forth the facts by protestation and limited appearance only and showing to said Court the reasons for a modification of its order theretofore entered appointing a receiver granting an injunction and restraining order and directing its Receiver to take possession of the assets of M. Zier & Co.

This Receiver and said attorney say they have made diligent effort to carry out the orders of this Court with respect to those matters, but the order of said Court remains as it was and they now move the Court to strike and expunge from the files herein the petition of this Receiver filed herein on the 14th day of February, 1903, and the order entered thereon."

Upon the aforesaid appearance made by this defendant and said Henry E. Jewett, Vice President of the said New Albany Trust Company on the 16th and 17th days of February, 1903, before the United States District Court at Indianapolis the Judge of said Court seemed to feel that the petition for advice which the said New Albany Trust Company, Receiver by this defendant and respondent as its attorney filed in the Floyd Circuit Court on the 14th day of February, 1903, was in some way offensive to him, the said Judge of the District Court of the United States, and for this reason, this defendant and respondent sought by said petition and statement filed before the Judge of said Floyd Circuit Court to have leave to strike out and expunge the said petition and withdraw it from the files. This defendant and respondent was in every way in good faith endeavoring to carry out the understanding which was had between him and Henry E. Jewett as Vice President of the New Albany Trust Company, receiver, and the Judge of the District Court of the United States for the District of Indiana. This defendant and respondent did advise and continue to advise, and at no time gave any contrary advice that the said New Albany Trust Company, as Receiver of the Floyd Circuit Court should turn over to Frederic D. Connor, Receiver of the United States District Court in such bankrupt proceedings, all of the property, assets and effects of M. Zier & Company, alleged bankrupts, and for this purpose said petition and statement was filed by this defendant and respondent as attorney for the New Albany Trust Company, Receiver, and was signed by him as such attorney on the 19th day of February, 1903, before the Judge of the said Floyd Circuit Court. This defendant and respondent was much embarrassed by the condition of affairs, and felt that the Judge of said Floyd Circuit Court might misconstrue

his action in the premises, and before going to New Albany on the 19th of February, 1903, he sought Mr. David A. Sachs, who is a lawyer residing in Louisville, Ky., and who is a friend of this defendant and respondent and asked him to go to New Albany with him for the purpose of appearing for this defendant and respondent before the Judge of the Floyd Circuit Court and explaining the action of this defendant in agreeing to advise the New Albany Trust Company, Receiver, to turn over the said property to Frederic D. Connor, Receiver. The said Sachs did go with this defendant and respondent to New Albany and was present when the said petition and statement was filed before the Judge of the Circuit Court of Floyd County on that day, and the said Sachs did undertake to explain the situation and to satisfy the said Judge. After filing the said petition and on the same day, to-wit, on the 19th day of February, 1903, the said Judge of the said Floyd Circuit Court made and entered the following order upon said petition and statement, to-wit:

> "And the Judge after considering said statement refuses to concur therein, but orders that the matters and facts therein stated show that said W. W. Watts has been guilty of a contempt of Court, and it is now ordered that a rule be issued against the said W. W. Watts, to appear before the said Judge on the 21st day of February, 1903, at 3 o'clock p. m. and show cause, if any he has, why he should not be punished for contempt."

On the same day, to-wit, February 19th, 1903, the New Albany Trust Company by Henry E. Jewett, Vice President, filed before the Judge of said Floyd Circuit Court its other and separate petition, which is as follows:

> "The New Albany Trust Company, Receiver in the above entitled cause, respectfully shows to the Court

that in pursuance of the order heretofore made by this Court it appeared by limited appearance and protestation only as ordered by this court before Judge A. B. Anderson, of Indianapolis, Judge of the United States District Court for the District of Indiana, on Monday the 16th day of February, 1903, and that upon the hearing in that Court this receiver stated to the Honorable Judge of said United States District Court that it was ready and willing to turn over to the Receiver appointed by the Honorable Federal Court in bankruptcy proceedings, of M. Zier & Company, then pending in said Court the property and assets of said M. Zier & Company in the hands of this Receiver, and this Receiver further states that it has not yet been able to make up its accounts as Receiver as to the receipts and disbursements, but that it is now preparing the same to be submitted to this Court: But that it is ready to turn over to Frederic D. Connor, the Receiver appointed by the United States District Court in bankruptcy all of the property of the said M. Zier & Company; and this receiver now prays for an order of this Court authorizing it to turn over to said Frederic D. Connor, the property and assets of said M. Zier & Company, now in its hands together with any balance in cash which may remain after such statement of its accounts shall be made up and presented and that upon delivering said property to said Frederic D. Connor, Receiver aforesaid, it be discharged from all further liability for or on account of said property or assets of said M. Zier & Company so turned over to such Connor as such receiver.

"This receiver further asks that upon making up and presentation of its accounts for allowances to this Court, that it be allowed to resign as Receiver of the said M. Zier & Company, and that upon the approval of its accounts its said resignation be accepted by this Court, and that it be fully and finally discharged as such Receiver."

"All of which is respectfully submitted.

THE NEW ALBANY TRUST COMPANY,
By Henry E. Jewett,
Vice President.

And afterwards, to-wit, on the same day the Judge of said Court upon said petition and statement made the following order:

> "And the Judge after reading said tender of resignation holds that the matters therein set forth show that said Receiver is in contempt of Court, and the Judge orders that a rule issue at once against said Receiver to appear before the undersigned Judge on the 21st day of February, 1903, at 3 o'clock p. m. and show cause, if any it has or can, why it should not be punished for contempt of Court."

And on the 19th day of February, 1903, after the said New Albany Trust Company had filed its petition and statement and offer of resignation, and asked leave to resign, before the Judge of the said Floyd Circuit Court, the said New Albany Trust Company, addressed to Frederic D. Connor, Receiver for the United States District Court, for the District of Indiana, the following letter, to wit:

"FRED. D. CONNOR,
Receiver, U. S. District Court,
District of Indiana.

In view of your demand that as Receiver of the Floyd Circuit Court we deliver you the property of M. Zier and Company, as such receiver will state.

We, this morning, filed before the Judge of the Floyd Circuit Court, in Chambers, report, a copy of which is attached hereto. Thereupon the Judge stated orally that he wanted us to hold the property until our accounts as Receiver were rendered and passed upon. We think this might be done to-morrow, and if you are willing to defer action until then, it will relieve us of embarrassment in the premises.

On the other hand, if you insist on immediate surrender of the property to you, we are bound to say that we believe

that to carry out in good faith the understanding with the Honorable Judge of the United States District Court of Indianapolis and our Vice-President, H. E. Jewett, we ought to surrender the property to you at once.

Very truly yours,
THE NEW ALBANY TRUST COMPANY,
By H. E. Jewett,
Vice-Pres't.

February 19th, 1903."

On the same day and after receipt by said Frederic D. Connor of said communication, he expressed to the New Albany Trust Company, Receiver, his unwillingness to delay the delivery of said property to him, and thereupon on said day the said property was delivered to him by the said New Albany Trust Company, Receiver.

On the following day, namely, February 20th, 1903, this defendant and respondent did appear before the Judge of the said Floyd Circuit Court, because the said Judge had by telephone on the evening before requested his presence, and in pursuance of this request and in obedience thereto, the defendant and respondent appeared. On that day an order was entered removing the New Albany Trust Company as Receiver of the Floyd Circuit Court in the said action, and appointing Charles D. Kelso as Receiver in its stead, and directing the said Kelso as Receiver to demand of the said New Albany Trust Company and of Frederic D. Connor the immediate possession of the property of M. Zier & Company, which came into the hands of said New Albany Trust Company, as Receiver in the action and requiring the said Kelso, Receiver, if the said New Albany Trust Company, or said Frederic D. Connor, should fail or refuse to immediately turn over or surrender possession of said assets and property

to said Kelso, Receiver, to report that fact to the Judge of the Court. Before entering this order, the New Albany Trust Company had actually, under the advice of this defendant and respondent turned over said property to Frederic D. Connor, Receiver of the United States District Court, for the District of Indiana in said Bankrupt proceedings, as above stated. This respondent did not advise, aid, connive at or abet the making or the entry of said order of the Judge of said Floyd Circuit Court removing the New Albany Trust Company, Receiver, and appointing Charles D. Kelso, as Receiver, and had nothing whatsoever to do with it.

On the 20th day of February, 1903, after the entry of said order appointing him Receiver in the stead of the New Albany Trust Company, Charles D. Kelso filed a written report before the Judge of said Floyd Circuit Court in which it was stated that he demanded of the New Albany Trust Company possession of all the property and assets of said M. Zier & Co. which came into its hands as Receiver of said M. Zier & Co. and that said New Albany Trust Company failed and refused to surrender the possession thereof for the reason as stated by it that it had turned over the plant of M. Zier & Co. located on Pearl and Oak Streets in the City of New Albany to Frederic D. Connor, and that as to the other assets of said M. Zier & Co. in its hands it intended to account forthwith to the Honorable Judge of the Floyd Circuit Court.

And afterwards on the same day upon consideration of said report, the Judge of the said Floyd Circuit Court entered an order directing the issuance of a summary writ directed to the Sheriff of Floyd County, requiring the said Sheriff to immediately seize and take into his possession and deliver over to said Charles D. Kelso, Receiver of M.

Zier & Co., all the property of said M. Zier & Co., which said Frederic D. Connor had in his possession, which property was described in said order. This defendant and respondent did not procure the entry of said order or connive at its entry or advise its entry, and did not know of its entry until after it had been entered. He had no connection whatever with it.

This defendant and respondent is informed that upon said last named order a writ was issued by the Clerk of said Floyd Circuit Court and placed in the hands of the Sheriff of said Floyd County, and that the same was executed and the property taken from the possession of Frederic D. Connor and given into the possession of Charles D. Kelso, Receiver. But this defendant and respondent did not advise said writ to be issued or connive at its issuance, and did not know of its issuance until after it had been issued and served. He had no connection whatever with it.

This defendant and respondent further says that after his appearance before the United States District Court at Indianapolis on the 16th and 17th days of February, 1903, all of his acts and doings and advice were with the single purpose of having the New Albany Trust Company at once turn over all of the property and effects of M. Zier & Company to Frederic D. Connor, Receiver of the said United States District Court in said bankrupt proceedings; and he did nothing, and said nothing and advised nothing which would in any way or to any extent obstruct or delay the execution of that purpose. He did nothing and said nothing and advised nothing with reference to the removal of the New Albany Trust Company as Receiver and the appointment of Charles D. Kelso as Receiver. He in no way nor to any extent directly or remotely or contingently did anything or advised anything looking to the retaking of said

property from the hands of said Frederic D. Connor, Receiver, and with reference to all of these things he had nothing whatsoever to do.

This defendant and respondent files herewith as part of this response marked "A" a full and complete copy and transcript of the record of said action of Joseph T. Ryerson & Son vs. M. Zier & Co., pending in the Floyd County Indiana Circuit Court, duly certified under the Act of Congress as the same now remains and appears of record in the office of the Clerk of the said Circuit Court as of date March 4th, 1903.

He also files as part of this his response a complete transcript of the record in the matter of M. Zier & Co., alleged bankrupt, No. 37, in the District Court of the United States, for the District of Indiana at New Albany, Indiana, duly certified by the Clerk of said court as the sa ne appears upon the files and records in said office on the 3rd day of March, 1903, which is marked "B."

And having fully responded and holding himself in readiness to make any further or other response which this Honorable Court may require, he prays that the rule as to him be discharged and the information as to him dismissed.

BERNARD FLEXNER,
DAVID W. FAIRLEIGH,
Counsel for Respondent.

W. W. Watts, on oath says that the statements of the foregoing response are true as he believes.

W. W. WATTS.

Subscribed and sworn to before me by W. W. Watts this 7th day of March, 1903.

NOBLE C. BUTLER,
Clerk.

UNITED STATES OF AMERICA,
District of Indiana. } ss.

I, Noble C. Butler, Clerk of the District Court of the United States within and for said District, do hereby certify that the above and foregoing is a full and true copy of the separate response and pleas of William W. Watts, in the case of the United States against Charles D. Kelso and others, filed in my office on the 9th day of March, 1903, as fully as the same appears upon the files now in my custody.

WITNESS my hand and the seal of said Court at Indianapolis in said District, this 11th day of March, 1903.

NOBLE C. BUTLER,
[SEAL.] *Clerk.*

And at the same time comes the defendant D. A. Sachs in person and by his attorneys, W. H. H. Miller and William M. Smith, and files his response herein, in the words and figures following, to-wit:

UNITED STATES DISTRICT COURT,
FOR THE DISTRICT OF INDIANA.

In the matter of
M. Zier & Company,
Alleged bankrupt. } No. 37 in Bankruptcy.

United States
vs.
Charles D. Kelso and D. A. Sachs and others.

SEPARATE RESPONSE AND PLEAS OF D. A. SACHS TO THE RULE AND INFORMATION HEREIN.

Your respondent and defendant herein, D. A. Sachs, denies that he committed any act or advised or consented

to the commission of any act in disobedience of any order of the District Court of the United States for the District of Indiana entered or made by said Court in the matter of M. Zier & Company, bankrupts, case No. 37, pending in said Court at New Albany, Indiana, and he deines that he in any way either directly or indirectly, aided, abetted or advised the taking from Frederick D. Connor, the receiver of this Honorable Court in said action stated any property, goods or chattels of M. Zier & Company, bankrupts, or alleged bankrupts, or that he did in any way withhold or aid, abet or advise the withholding of any such property, goods or chattels, or that he in any way disregarded or disobeyed or aided, abetted or advised the disregarding or disobeying the orders or decrees of said Court or that he had been guilty of any contempt in said case.

He says that on February the eighteenth, 1903, he first learned of the bankrupt and State Court proceedings in regard to said matter stated, and that from Honorable W. W. Watts, who represented to respondent that there had some complication arisen as to the jurisdiction of the Floyd Circuit Court and this Honorable Court, and that the Judge of the Floyd Circuit Court was complaining in regard to the action of said Watts in this Honorable Court, and he, Watts, desired this respondent to appear as his friend and attorney in the said Floyd Circuit Court and relieve him if possible of any reflection made upon him by said Court or seeming contempt by reason of his said action in this Honorable Court and that this respondent did appear before said Judge and attempted to explain the matter as far as said Watts was concerned, but that he at no time advised the disobedience or disregard of the orders of this Honorable Court or the taking of said goods, property or chattels, from said Connor nor did he know that the same was in-

tended to be done until after it had been accomplished, but on the contrary, he advised against such course. He says that all he did in this matter was without fee or any consideration whatever except through friendship to said Watts.

He says that at present he is unable to say positively as the same is matter of law as to the correctness of the proceedings herein or the right of this Honorable Court to take the property from the receiver of the Floyd Court as he finds some conflict of authorities in regard to said matter, but he then believed and is still of the opinion and is advised by Counsel and does state that the receiver of the said Floyd Court had the rightful possession of said property and that this Honorable Court did not have the right or authority to interfere therewith in the summary way pursued herein.

But however this matter may be he gave no advice in regard thereto but simply acted as he has stated, advising however, that under the circumstances in this particular case, it was better not to interfere with the property in the hands of said Connor, receiver, and he fully believed that that course would pe pursued until he learned the fact of the taking of said property as stated.

3. This defendant and respondent further states that on the 30th day of December, 1902, Joseph T. Ryerson & Son filed their certain complaint in the Floyd Circuit Court of the State of Indiana against M. Zier & Co., defendant, and on the same day caused to be isused by the Clerk of said Floyd Circuit Court, and there was duly issued by the said Clerk a summons upon the said complaint against M. Zier & Co., which said summons on the same day of its issuance came duly to the hands of the Sheriff of Floyd County, Indiana, and was by him on the same day served on the defendant, M. Zier & Co. The said complaint of Joseph T. Ryer-

son & Son, against M. Zier & Co. so filed in the Floyd Circuit Court averred an indebtedness of $15,000 of the defendant, M. Zier & Co., to the plaintiff, Joseph T. Ryerson & Son, upon certain promissory notes stated in the complaint, and the said complaint prayed judgment in favor of said plaintiffs against said defendant in said sum of money.

The said complaint averred these further facts, that the defendant, M. Zier & Co., is a corporation duly created and organized under the laws of the State of Indiana, and authorized to and was carrying on as such corporation the business of manufacturing boilers in the City of New Albany, in the County of Floyd and State of Indiana; that the said business was a large business; that the said defendant was indebted in the aggregate to divers persons in at least the sum of $65,000; less that it was unable to meet its said obligations; that its creditors were threatening to enter suits against it; that the property and assets of said defendant corporation consisted of a manufacturing plant, which was in opertaion, and which was employed in filling unfinished orders, and working on unfinished contracts; that the defendant was without means or money with which to continue the operation of its said business, and that if suits should be instituted against it, and its property seized upon executions or attachments, the assets and property of the defendant would be dissipated and its plant rendered much less valuable to its creditors generally than if the said property were properly preserved and continued as a going concern; and that the property, funds and profits of the business of the said defendant were in danger of being lost and materially injured and destroyed; unless a receiver were immediately appointed to take charge of said property and hold the custody and possession thereof, and preserve the same for such disposition thereof as the Court might adjudge.

The said Floyd Circuit Court of the State of Indiana, and the Judge thereof in vacation were and are by the Statutes and Laws of the State of Indiana authorized and empowered to appoint receivers of and for insolvent corporations and their property and assets; that the said Floyd Circuit Court is a constitutional Court, and the judge thereof a constitutional officer, made such by the Constitution of the State of Indiana, and the said Floyd Circuit Court is by the Constitution and laws of the State of Indiana a Court of general, original jurisdiction.

On the same day on which said complaint was as aforesaid filed in the Floyd Circuit Court, and after it was filed, and after the issuance of summons thereon, the plaintiffs in said action of Joseph T. Ryerson & Son, after due notice thereon to the defendant, M. Zier & Co., moved the Hon. William C. Utz, who was and is the duly elected, commissioned, qualified and acting judge of the said Floyd Circuit Court, to appoint a Receiver of the property and assets of the defendant, M. Zier & Co., in pursuance of the prayer of the said complaint.

The said defendant, M. Zier & Co., appeared to said motion and after due consideration thereof, the said Judge sustained said motion, and appointed by his order, duly made and entered, the New Albany Trust Company as Receiver of the said defendant, M. Zier & Co., and of all of its assets and property. The said New Albany Trust Company is a corporation created and organized under the laws of the State of Indiana with full corporate powers among other things to act as Receiver under the appointment of Courts. That the said New Albany Trust Company immediately upon its said appointment duly qualified as such Receiver, and then and there took upon itself the duties of said Receivership, and took the oath as required by law and by said order of appointment.

That immediately after its said appointment and qualification as Receiver aforesaid, and on the same day on which it was appointed as such Receiver, and under the order of the said Floyd Circuit Court, the said New Albany Trust Company, as such Receiver, took into its possession all of the said property and assets of the said defendant, M. Zier & Co.

That after its said appointment, the said Receiver, made out an inventory of the property of the said M. Zier & Co., which it had taken possession of under its said appointment as such Receiver on the 30th day of December, 1902, and caused the same to be appraised, which inventory and appraisement were filed in the said Floyd Circuit Court in said action, and said inventory shows, and it is true that the appraised value of said property was about $28,500. That on the 16th day of January, 1903, the said Receiver filed in the Floyd Circuit Court its report and petition wherein it sought the advice and instruction of said Court with respect to the continuance of the operation of said plant and prayed the Court that a time be fixed for the hearing of said report and petition, and further prayed that said M. Zier & Co. and its officers, and the creditors of said M. Zier & Co. be notified by mail and by publication of the time and place of the hearing of said report and petition, and that the said creditors be requested to appear and make known their objections, if any, to the continuance of the operation of the plant of the said M. Zier & Co.

Said petition further prayed that all creditors of M. Zier & Co. be required to prove their claims against said estate by filing proof thereof with the said Receiver, or by intervening petition in said case, and that all creditors and persons be restrained and enjoined from prosecuting suits involving said assets in any manner except by intervening petition in said action.

And thereupon upon consideration of said petition, the Floyd Circuit Court made a certain order on the 16th day of January, 1903, directing said Receiver to continue the operations of the said business of the said M. Zier & Co. and to carry out certain contracts for manufacturing boilers and appliances, which were stated in said order, and further directed that a hearing be had of the creditors of the said M. Zier & Co. on the 24th day of January, 1903.

On the 24th day of January, 1903, the time fixed for the hearing of the said creditors of the said defendant, it was made to appear to the said Court by the said Receiver that all of the creditors of the said M. Zier & Co., as shown by the books of the said M. Zier & Co., had been notified by the said Receiver to be present on said 24th day of January, 1903, to be heard on said matters, and on said day a large majority in number and amounts of the creditors of the said M. Zier & Company appeared in said Court, among whom was the Inland Steel Company, and were heard upon the said petition of said Receiver, and thereby they became and were and are parties to said action; and after said hearing, and the Court being sufficiently advised, the said Court ordered and directed that the said Receiver carry out and complete all unfinished contracts of the said defendant, M. Zier & Co., and the said Court gave to said Receiver power and authority to purchase new material for this purpose, but ordered said Receiver not to make any new contracts, and gave to said Receiver divers other orders and directions, and further ordered that all creditors and other persons be enjoined and restrained from prosecuting any claims or suits against said estate in the hands of said Receiver except by intervening in said cause, or by first obtaining leave of said Court in said action.

The respondent and defendant further states that on the 6th day of February, 1903, the Inland Steel Company, a

creditor who had appeared, and was a party to said action, in said Floyd Circuit Court, and John C. Thurston and John Dey, doing business as the Dey Time Register Company, filed their certain petition in involuntary bankruptcy in the District Court of the United States for the District of Indiana against M. Zier & Co., alleging certain acts of bankruptcy committed by M. Zier & Co., and praying that the said M. Zier & Co. be adjudged a bankrupt. The said petition in bankruptcy further alleged: "That under certain proceedings in a State Court, a Receiver has been appointed of the assets of said corporation, M. Zier & Co., and is attempting to collect assets of said estate and incurring petty expenses in and about said estate which must be borne by the creditors thereof, and your petitioners aver that it is absolutely necessary for the preservation of said estate of M. Zier & Co. for the benefit of all of its creditors that a Receiver in bankruptcy be appointed herein forthwith."

On the 11th day of February, 1903, the said Inland Steel Company filed in said proceedings in bankruptcy its certain petition in which it stated among other things "That at the instance of said Joseph T. Ryerson & Son, a Receiver has been appointed by the Floyd Circuit Court of Floyd County, Indiana, to take charge of the assets of said alleged bankrupt; that the New Albany Trust Company is the Receiver so appointed, and that Harry E. Jewett who is the attorney for said M. Zier & Co. is also the Vice-President of said New Albany Trust Company; that said Receiver is now running the business of M. Zier & Co. and is completing certain contracts and for that purpose has employed a large number of men in the manufacturing establishment of said M. Zier & Company and has placed in charge of said plant one Michael Zier who is the Vice-President and Treasurer of said alleged bankrupt; that said Michael Zier is wholly

incompetent for said business; that he is wholly unfamiliar with book-keeping and necessary office work which is essential to the safe conduct of said business, and your petitioner avers if said Receiver is permitted to remain in charge that it would result to the injury and detriment of such of the general creditors of said M. Zier & Co. who are entitled to participate in said bankrupt estate.

"Your petitioner further states that W. W. and J. R. Watts, attorneys at Louisville, Ky., are the attorneys for said Joseph T. Ryerson & Son in said proceedings wherein the said New Albany Trust Company was appointed Receiver and that said W. W. and J. R. Watts are also attorneys for said Receiver, and your petitioner fears that said Receiver is friendly to said Joseph T. Ryerson & Son and said alleged bankrupt to the detriment of the creditors at large of said alleged bankrupt.

"Your petitioner further alleges that it is absolutely necessary for the preservation of said estate for the benefit of all the creditors who shall be entitled to participate therein that a Receiver in bankruptcy be appointed herein forthwith to take charge of all the assets of said alleged bankrupt and administer the same under the directions of this Honorable Court with the usual powers of Receivers in such cases.

"Wherefore your petitioner prays that a Receiver in bankruptcy be appointed forthwith and that such other and further orders be entered herein as to your Honor shall seem meet and proper."

And upon the same day, to-wit, on the 11th day of February, 1903, the said District Court of the United States for the District of Indiana in said bankrupt proceedings, upon consideration of said petition filed by the Inland Steel Company entered and made an order directing among other things as follows, to-wit:

"It is therefore considered and ordered by the Court that Frederick D. Connor be and he is hereby appointed as Receiver herein of the property of said M. Zier & Co. with authority to take charge and possession of all of the same and particularly the goods, wares and merchandise, books, papers and effects of or belonging to said M. Zier & Co. located at the City of New Albany, Floyd County, Indiana, and now in the hands of the New Albany Trust Company, as Receiver of said M. Zier & Co. appointed by the Floyd Circuit Court of Floyd County, Indiana. Said Receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said City of New Albany, together with all the tools, machinery, appliances, materials and finished products within and about said plant at said City of New Albany, which said plant is located at the corner of Pearl and Oak Streets in said City and all other property of said M. Zier & Comyany wheresoever found and situated.

It is further ordered and adjudged by the Court that the New Albany Trust Company be and it is hereby required to deliver up to said Frederick D. Connor as Receiver all the said property and effects of said M. Zier & Company now in its possession, and to refrain hereafter from interfering in any way with the said Receiver's possession and control of the same."

And Frederic D. Connor duly accepted said appointment as the Receiver of the District Court of the United States for the District of Indiana in said bankruptcy proceedings and duly qualified and executed bond as such as is required in the said order of appointment.

On the 13th day of February, 1903, Frederic D. Connor, as Receiver of the said United States District Court in said bankrupt proceedings, and acting under the order appoint-

ing him as such Receiver, as defendant and respondent was informed and believed, appeared at New Albany, Indiana, and demanded of the New Albany Trust Company that it deliver to him the assets and effects of M. Zier & Co. which it held and had in its possession as Receiver of said Floyd Circuit Court.

On the 14th day of February, 1903, the said Frederic D. Connor, as said Receiver of the United States District Court by George H. Hester, as his Attorney, appeared in the said Floyd Circuit Court in said action of Joseph T. Ryerson & Son against M. Zier & Co. and filed his verified petition therein showing his appointment as such Receiver by order of the United States District Court of the District of Indiana, and praying said Floyd Circuit Court for an order requiring the said New Albany Trust Company, as Receiver of said M. Zier & Co. to turn over and surrender to him, the said Frederic D. Connor, as receiver in Bankruptcy the property of the said M. Zier & Co. of which the said New Albany Trust Company as Receiver of M. Zier & Co. under the orders of the said Floyd Circuit Court was custodian, and thereupon said Frederic D. Connor as such Receiver was made a party to said suit and the matter of said petition was continued until the next term of said Floyd Circuit Court.

This respondent further says that after he was called into this matter, viz: Monday, February 23,1903, he learned for the first time of the making of the order in this Honorable Court as follows, viz:

"This cause coming on now to be heard upon the petition of Frederick D. Connor, filed herein on the 16th day of February, A. D. 1903, for the instructions of the Court concerning the property and assets of said M. Zier & Company, which are now in the possession of the New Albany Trust Company, as Receiver of the Floyd Circuit Court, in a suit

therein pending against said M. Zier & Company, because of their insolvency; and the petitioning creditors in this cause and said Connor, Receiver as aforesaid, being now present and represented by George H. Hester and William Wilhartz, their Solicitors and said New Albany Trust Company, Receiver as aforesaid, being now present and represented by Henry E. Jewett, its Vice President, and by William W. Watts, its Solicitor, and after argument by counsel, the said New Albany Trust Company, as Receiver of the Floyd Circuit Court, by its said Vice President, having voluntarily offered and agreed by and with the consent and approval of said William W. Watts, it Solicitor, in open Court, to surrender, full and immediate possession and control of the property and assets of said M. Zier & Company, in its possession or under its control, as Receiver of the Floyd Circuit Court, to said Connor, as Receiver of this Court, upon the presentation by him to said New Albany Trust Company of a certified copy of the order of his appointment as such Receiver heretofore made by this Court.

It is now hereby ordered by the Court that said Connor Receiver as aforesaid, forthwith present a certified copy of the order of his appointment as such Receiver to the said New Albany Trust Company, and immediately thereupon the full possession and control of the property and assets of said M. Zier & Company, that are now in possession or under control of said New Albany Trust Company as Receiver of the Floyd Circuit Court.

This respondent further shows to the Court that on the 19th day of February, 1903, W. W. Watts, and the New Albany Trust Company, as affiant is informed and believes appeared before the Honorable Judge of the Circuit Court of the County of Floyd and by report of petition showed to said Court that this Honorable Court was insisting that it

had sole jurisdiction of the affairs of said bankrupt and the right summarily to take possession of all the property in the hands of the Receiver of said Floyd Circuit Court, under the proceedings above referred to, but the said Judge of the Floyd Circuit Court refused to concur in that conclusion and insisted that his jurisdiction was prior and superior to that of this Court and thereupon threatened proceedings for contempt against said Watts and threatened to punish him for alleged actions in violation of the orders of that Court in the premises; that it was solely, as hereinbefore stated, by reason of the complications in which Mr. Watts found himself by reason of the conflicting views of said two Courts; that this respondent had anything to do with said proceedings and he avers that his action in the premises and the only advice and only action that he took was with a view to assisting and extricating Mr. Watts from said complications and with a view to allaying the irritation and avoiding the unpleasant consequences that might result from a conflict in the premises, and with a view to avoiding any action that might be justly construed as a violation of the orders of either Court.

Affiant further says that he prepared no petition or order for the Judge of the Floyd Circuit Court to order said property to be seized; that he did not know that such a petition or order was to be prepared or was prepared until after the said petition or order had been presented and the order made; that said petition was presented or the order was made at night after affiant had gone home to his home in Louisville, as he is informed, and was without his knowledge, cognizance or consent; that he had nothing whatever to do in any way with the procuring or the execution of said order or with the taking of said property or any part thereof from said Connor, Receiver.

And this respondent for the further information of this Court begs leave to refer to a transcript of the proceedings of the Floyd Circuit Court or the Judge thereof, which is filed as Exhibit "A," with the response of the said W. W. Watts in this matter, and prays that the same may be considered as a part of this, his response, solely for the purpose of showing what action was taken in said Floyd Circuit Court, and having fully answered the premises this respondent prays that he be hence discharged with his costs.

D. A. SACHS.

W. H. H. MILLER,
W. M. SMITH,
Attorneys for Sachs.

Subscribed and sworn to before me this 9th day of March, 1903.

NOBLE C. BUTLER,
Clerk.

And thereupon the United States Attorney files his motion to reject and strike out parts of the response of the defendant William W. Watts, which motion is in the words following, to-wit:

(Motion not on file.)

And thereupon the United States Attorney files his reply to each response, which replies are respectively in the words following, to-wit:

Comes now the United States by Joseph B. Kealing, United States Attorney for the District of Indiana and by way of replication to the response of William Watts, denies each and every allegation contained therein except his denials.

JOSEPH B. KEALING,
U. S. Attorney.

Comes now the United States by Joseph B. Kealing, United States Attorney for the District of Indiana and by way of replication to the response of D. A. Sachs, denies each and every allegation contained therein except his denials.

JOSEPH B. KEALING,
U. S. Attorney.

And this cause is now submitted to the court for trial, finding and judgment; and the evidence being partially heard the court doth now adjourn until to-morrow morning.

And afterwards, to-wit, at the November Term of said Court, on the 10th day of March, 1903, before Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney and the defendants William W. Watts and D. A. Sachs in person and by their respective Attorneys come also, and the evidence having been further heard the court doth now adjourn until to-morrow morning.

And afterwards, to-wit, at the November Term of said court, on the 11th day of March, 1903, before Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney, and the defendants William W. Watts and D. A. Sachs in person and by their respective Attorneys come also, and the evidence having been further heard the court doth now adjourn until to-morrow morning.

And afterwards, to-wit, at the November Term of said Court, on the 12th day of March, 1903, before Honorable Albert B. Anderson, Judge of said Court, the following

further proceedings in the above entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney, and the defendants William W. Watts and D. A. Sachs in person and by their respective Attorneys come also, and the evidence having been further heard the court doth now adjourn until to-morrow morning.

And afterwards, to-wit, at the November Term of said court, on the 13th day of March, 1903, before Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney, and the defendants William W. Watts and D. A. Sachs in person and by their respective Attorneys also come, and the evidence and argument of counsel having been heard by the court, the court doth now take the same under advisement.

And afterwards, to-wit, at the November Term of said Court, on the 14th day of March, 1903, before Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney, and the defendants William W. Watts and D. A. Sachs in person and by their respective Attorneys also come, and thereupon the court having considered the evidence and argument of counsel and being sufficiently advised in the premises doth find that said defendants are guilty of the contempt charged.

It is therefore considered by the court that said defendant William W. Watts, for the offence charged be imprisoned and confined in the jail of Marion County, Indiana, for the

term of sixty days, and that he do pay unto the United States the cost of this proceeding, taxed at $ . . ., and that he do stand committed until said costs are paid.

And it is further considered by the court that said defendant D. A. Sachs for the offence charged be imprisoned and confined in the jail of Marion County, Indiana, for the term of sixty days, and that he do pay unto the United States the cost of this proceeding, taxed at $ . . ., and that he do stand committed until said costs are paid.

Upon the rendition of the judgment herein, the following opinion was delivered by the court:

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE DISTRICT OF INDIANA.

Saturday, March 14, 1903.

HONORABLE A. B. ANDERSON, *District Judge.*

UNITED STATES,
vs.
David A. Sachs. } For Contempt of Court.

UNITED STATES,
vs.
William W. Watts. } For Contempt of Court.

ANDERSON, *District Judge*, orally:

Some time prior to the 29th day of December, 1902, a corporation located at New Albany, existing under the name of M. Zier and Company, became insolvent. By a series of fraudulent entries on the books, and by padding the pay rolls, M. Zier, the vice president and one of the largest stockholders of the corporation, had stolen from the funds of that corporation $9,600. About the 29th day of Decem-

ber, 1902, he paid this $9,600. over to one Charles L. Jewett, an attorney at New Albany, who, with his brother, H. E. Jewett, composed the firm of attorneys of Jewett and Jewett, of that city. Of this money $600. was paid over to Charles L. Jewett as attorney's fees, for services to be rendered to the M. Zier and Company corporation in effecting a settlement of some kind with its creditors. The $9,600 was paid over to Charles L. Jewett to be paid by him to the agent of Minnie Zier, a large stockholder in the corporation, and a sister-in-law of M. Zier.

This money was paid to Charles L. Jewett under such circumstances that this court believes that at the time it was paid over to him he knew the manner in which the money was abstracted from the treasury of this company, and knew the fraudulent purpose for which it was handed over to him.

On the 29th of December, 1902, or just a few days before that, Ryerson & Son of Chicago, a creditor of M. Zier and Company, received $3,100. of the funds of this corporation. On the 29th day of December, Charles L. Jewett went to the city of Chicago and took with him this $9,000. It must have been arranged beforehand that the agent of Minnie Zier, Mr. Meargel, who lives at Minneapolis, should meet him in Chicago.

It is indisputable that he paid that $9,000 to Mr. Meargel, in the city of Chicago, on the 29th day of December, 1902. At that time, and for some time prior thereto, Charles L. Jewett had been the attorney and counselor and adviser of M. Zier and Company, and especially of its managing vice president, Mr. M. Zier; knew all about its affairs, and, as attorney and confidential adviser of M. Zier and the corporation, he went to the City of Chicago, at the time he paid this $9,000 to the agent of Minnie Zier, as he himself testifies,

chiefly for the purpose of procuring the corporation, Ryerson and Son, to bring suit against M. Zier and Company in the Floyd Circuit Court, at New Albany, to have a receiver appointed and to wind up its affairs. While in Chicago he made that arrangement with Ryerson and Son. He called up his brother, Henry Jewett, over the long-distance telephone and told him of the arrangement. That night the agent of Ryerson and Son went to Louisville. The next morning Henry Jewett met with Watts and Watts, the attorneys of Ryerson and Son, and it was agreed between them that a suit should be immediately begun in the Floyd Circuit Court, that a receiver should be immediately appointed for all the assets and property of this insolvent corporation, and that the New Albany Trust Company, in which Henry E. Jewett, and Charles L. Jewett were both stockholders, and of which Henry E. Jewett was the vice president, should be the receiver. The suit was commenced on the afternoon of December 30, 1902. Summons was issued. Immediately M. Zier, in pursuance of this arrangement and understanding, with his attorney, Henry Jewett, appeared before the judge of that court, in chambers, and consented to the appointment, or agreed to the appointment of the New Albany Trust Company as receiver of the M. Zier and Company property.

It is said that this was a friendly suit. To the mind of this court it was a fraudulent proceeding. It was collusive. It was born in fraud, and the subsequent transactions down there show that it reeked with fraud from begininng to end. In my judgment that proceeding by which the New Albany Trust Company was made the receiver of M. Zier and Company, an insolvent corporation, was in substance a voluntary assignment in which the insolvent corporation selected the trustee, the purpose and scope of which was the distri-

bution of the assets of this insolvent and subsequently adjudicated bankrupt corporation, among its creditors. On the 16th day of January this receiver filed in the Floyd Circuit Court an inventory, and what has been here called a petition for instructions as how to manage the affairs of the receivership. Creditors, such as appeared to be so on the books of M. Zier and Company, were notified by mail to appear in the Floyd Circuit Court on the 24th day of January, at a creditors' meeting. This creditors' meeting was the most remarkable meeting of the kind that this court has ever heard of. It was held in the court-room, and it is said to have been presided over by the judge. It is claimed, by those who were engineering the proceeding, that the purpose of it was to advise with those creditors as to the best methods upon which to administer this trust; and yet the evidence shows conclusively—there is no question about it—that this payment of $9,000 of money which was stolen from the treasury of this corporation was concealed from the creditors; that this payment of $3,100 to Ryerson and Son, just a few days before the beginning of that suit, was concealed from the creditors; and that the payment of $600 to Jewett and Jewett as attorneys' fees was concealed from the creditors.

After the creditors had consulted about the matter to some extent, and after most of them and their representatives had left the court-room, W. W. Watts, one of the defendants, here, drew up an order to be entered by the Floyd Circuit Court. That order was an effort in one sense to bind the creditors who were present at that meeting, but without the knowledge of any other creditor, and without the knowledge of any representative of any other creditor, and, at the procurement of the defendant, W. W. Watts, the court not only authorized the continuance of the business of the

corporation and the completion of certain contracts, but enjoined all creditors from proceeding in any other court or manner, except by intervention in that proceeding in that court. It was declared by Mr. Watts at that meeting that the purpose and object and scope of the proceedings in that court was to wind up the affairs of the M. Zier and Company, and to do this as near in conformity to the bankrupt law as possible.

On the 6th day of February, 1903, three creditors of the M. Zier and Company corporation, representing the necessary amount, the statutory amount of claims, filed a petition in bankruptcy in this court. On the 11th day of February, 1903, these same creditors filed in this court a petition asking this court to appoint a receiver for the alleged bankrupt, M. Zier and Company. As set forth in the petition, matters and facts were shown which at that time appeared to the court to imperatively demand the appointment of a receiver, and the subsequent developments in this case have conclusively shown that if this court had not appointed a receiver at that time, and used every effort to get that property into the possession of the officers of this court, it would have failed to do its duty.

On the 11th day of February, 1903, the court, after due deliberation, appointed as receiver of this court, Frederick D. Connor. He was ordered to take possession of the property of the corporation, M. Zier & Company, which company has since been adjudicated by this court to be bankrupt. The New Albany Trust Company was ordered to refrain from any interference with that property. Mr. Connor went to New Albany, filed a petition in the Floyd Circuit Court on Saturday, February 14th, the last day of the then term of that court, in which petition he set forth a certified copy of his appointment and the orders which were

made in connection therewith, and asked that court to order its receiver to turn the property over to him as receiver of the court. The judge of the Floyd Circuit Court ignored that petition, paid no attention to it whatever, neither granted it nor denied it, but contemptuously continued it to next term, which did not meet until three weeks thereafter. On February 16, 1903, W. W. Watts, the defendant here, having obtained authority, as he claimed from the judge of the Floyd Circuit Court to appear here for that purpose, together with Henry E. Jewett, the vice-president of the New Albany Trust Company, the receiver appointed by that court, appeared in this court They objected that this court had no power to appoint a receiver; that if it had the power to appoint a receiver that it had no power to take possession of the property of the alleged bankrupt by summary proceedings.

I stop here simply to state that the chief argument made by Mr. Watts at that time was that the receiver of the Floyd Circuit Court held by adverse possession. It was maintained upon that argument that this court had no right to take possession of this property out of the receiver of the Floyd Circuit Court because that court's receiver held adversely. Counsel for the defendants here who have argued the law questions before this court upon this hearing have distinctly disavowed this contention. Mr. Miller yesterday squarely stated that there was no question of adverse possession in this case.

After a full discussion of this matter before this court on the 16th and 17th days of February, 1903, Henry E. Jewett, as vice-president of the New Albany Trust Company, and W. W. Watts, Attorney for the New Albany Trust Company, receiver, and the attorney for the plaintiff in that suit—an attorney authorized, as he claimed, by

the judge of that court to represent the matter here—voluntarily, as the records of this court show, in open court, offered to turn this property over to the receiver of the United States Court. Both Mr. Henry Jewett, who is vice-president of the New Albany Trust Company, and a lawyer, and Mr. W. W. Watts, who is a lawyer, at that time conceded as Mr. Miller stated here yesterday, that the absolute right to the possession of this property was in this court. Thereupon these gentlemen, after having conceded, that the right to the possession of this property was in the receiver of this court, after voluntarily offering to turn this property over to the receiver of this court, returned to the city of New Albany.

Two days after, on Thursday morning, February 19th, in pursuance of that voluntary offer, the New Albany Trust Co npany, turned over to Frederick D. Connor, the receiver of this court, the property and plant of this bankrupt corporation. Mr. Connor took peaceable possession of that property as the receiver of this court, entered into possession, remained in possession, caring for it as he was bound under the law to do until Friday night, the 20th day of February, when, after dark, Charles D. Kelso, Ramond G. Morris, Claude Sittason and so ne others went to this plant and forcibly, in the night time, ejected the receiver of this court and took violent and forcible possession of that property. Thereupon the receiver having filed a written statement here of the facts, a citation was issued to these defendants, among others, to show cause why they should not be punished for a contempt of this court in interfering with the peaceable and lawful possession of the property of the bankrupt in the receiver of this court.

It has been argued here as though the question now before the court was whether or not this court has the power

by summary proceedings, or had the power at that time, by summary proceedings, to take the possession of that property away from the receiver of the state court and place it in the hands of the receiver of this court. As I shall show presently, that is not the question here at all. But so much has been said about the law in this case that I propose to now go briefly into that question and show that this court had the power, the unquestioned power, to issue a summary order wresting this property from the receiver of the state court, and placing it into the custody of the receiver of this court.

The constitution of the United States among other things say: "This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." I understand the word "supreme" in that clause to mean supreme—just what it says.

Another clause of this constitution gives Congress the power to enact uniform laws upon the subject of bankruptcy throughout the United States. It is familiar law that whenever Congress exercises any of powers granted to it by the federal constitution, that it occupies the field and that no state can thereafter enter that field. In this instance, Congress has occupied the field. It has passed a uniform law upon the subject of bankruptcy. And, under the constitution, the clause which I have just read, and the authority given to Congress to pass this law, upon these principles alone, it seems to me to be perfectly evident that whatever there may be in the state law or in the state proceedings which is antagonistic to the scope, effect and tenor of the bankrupt law must necessarily fall.

But that has not been left to construction. The courts have frequently passed upon the question. Much has been said about the rulings under the act of 1867. I shall pause here long enough to show what the courts held under that law.

In the National Bankruptcy Register, volume six, page forty-three, is a case decided by Judge Blodgett, formerly of this circuit. It is entitled, In re Merchants' Insurance Co. In this case creditors petitioned to have an insurance company declared a bankrupt. Prior to the filing of the petition, suit had been begun in a state court of Illinois to dissolve that corporation, and a receiver had been appointed in that suit prior to the institution of the proceedings in involuntary bankruptcy; and the question was whether or not the receiver appointed by the United States Court in bankruptcy was entitled to take the possession of the property and administer it notwithstanding the fact it was then in the possession of the receiver of the state court. Judge Blodgett, in the course of his decision, said: "The object and intent of the general bankrupt law is to place the administration of the affairs of insolvent persons and corporations *exclusively* under the jurisdiction of the federal courts of bankruptcy; and the enactment of the general bankruptcy law, now in force, suspended all actions and proceedings under state insolvent laws." In the complaint in the Floyd Circuit Court Ryerson and Son passed their right to the appointment of the receiver upon the sole ground that the corporation was insolvent. In the same case it is further said: "But it is objected that the proceedings in the state court here complained of, being in accordance with a general statute of this state and part of the organic law by which the respondent exists, and being predicated mainly upon the reserved right of the state to protect its citizens against

irresponsible insurance companies, and the state court having acquired jurisdiction of the parties and subject-matter, this court can not now interfere as a bankrupt court to take charge of and administer the assets in question, although the insolvency of the respondent is fully conceded. It seems enough to suggest in answer to this position, that, if correct, any state could effectually defeat the operation of any bankrupt law passed by congress by simply providing that any person or corporation if deemed insolvent or incapable of doing business by a state officer, might, under the power of exercising and enforcing police regulations or enactments by the states be wound up and its assets administered upon in the state courts notwithstanding such person or corporation might be insolvent and guilty of all the acts of bankruptcy provided for in the general bankrupt law."

And in the 11th National Bankruptcy Register in the case of John L. Watson v. The Citizens Saving Bank of South Carolina, in a decision by Judge Bond, it is held (11 N. B. R. 161): "The jurisdiction of the United States courts in bankruptcy is an exclusive jurisdiction, and although State courts have jurisdiction under their statutes to settle and arrange the affairs and distribute the assets of an insolvent corporation their jurisdiction is at an end the moment the corporation is adjudicated a bankrupt by the United States District Court." And in the opinion of the court, it is said: "We are of the opinion that the jurisdiction of the United States courts in bankruptcy is an exclusive jurisdiction. That although the state courts have jurisdiction, under their statutes, to settle and arrange the affairs and distribute the assets of an insolvent corporation, their jurisdiction is at end the moment the corporation is adjudicated a bankrupt by the District Court," "and in this respect we can see no difference between the proceedings of a state court

under a particular statute relating to insolvent corporations, and its proccedings under its general powers as a court of equity to wind up the affairs of an insolvent corporation."

The Federal courts, sitting as courts of bankruptcy, have repeatedly decided this question since the act of 1898 was passed.

In 90 Federal, 475, in the case of In re Gutwillig, decision by Judge Brown, District Judge in the southern district of New York, it is held: "Voluntary general assignments for the benefit of creditors made in conformity with the laws of the State of New York, though said laws are not treated as 'insolvent laws' within the meaning of the last paragraph of the act of 1898, are voidable by the trustee of the debtor in bankruptcy if made within four months of the adjudication, because incompatable with the purpose and policy of the bankrupt law, and the rights of creditors thereunder to the appointment of the trustee and the supervision of the assets of bankruptcy; because in fraud of creditors within section seventy of the act, as the assignment deprives creditors of the important advantages secured to them under the act of 1898; and because if not voidable, the clause of section 3, making such an assignment *ipso facto* 'an act of bankruptcy' would be practically nullified, and rendered of no use to creditors." And in this case the court cites the case which I will call attention to presently.

In the same volume, in the case of In re Bruss-Ritter Co., 90 Fed. 651, decision by Judge Seaman of this circuit, it is decided squarely that the bankruptcy act suspends the operation of state insolvency laws from the time of such enactment, and subject only to such limitations as may be prescribed in the bankruptcy act. The facts of this case are so similar to the case at bar that I want to read a little from this decision: "The petition by five creditors states a *prima*

facia cause within the provisions of the recent act of congress for an adjudication of involuntary bankruptcy against the Bruss-Ritter Company, as an insolvent corporation of Wisconsin. The petition was filed November 4, 1898, and on November 11, 1898, upon petition showing cause therefor, a receiver of the effects of said corporation was appointed by order of this court. The motion to dismiss is founded solely upon the contention that the bankruptcy act of July 1, 1898, having postponed the filing of any petition for involuntary bankruptcy until November 1, 1898, was inoperative in the case at bar, because an action was commenced in the Superior Court of Milwaukee County on October 27, 1898, founded on alleged insolvency and fraud, to take possession of the assets of the corporation for the same purposes involved in the bankruptcy proceedings, pursuant to provisions of the Wisconsin statute, which action was pending when this petition was filed, including an application for the appointment of a receiver. The power of congress to enact a general bankruptcy statute is secured by constitutional provision. In the absence of such congressional enactment, the states are free to provide for insolvency relief of limited extent, but when congress exercises its authority by a general enactment all state action is suspended from such time and subject only to such limitations as may be prescribed in the act. Tua vs. Carriere, 117 U. S. 201-209. As remarked in Platt vs. Archer, 9 Blackf. 559, Fed. cases No. 11213, this authority of congress 'is paramount and exclusive, and so is the jurisdiction of the district court thereunder.'" There is a case where a proceeding such as the one in the case at bar was begun in the state court. A receiver had been appointed by the state court. A receiver was then in possession, and the court held that the moment the petition was filed in bankruptcy, before the adjudication, pending the adjudication,

upon due application, the court on bankruptcy had the right to appoint a receiver and had the right to take the property from the state court. In that case the court further said: "There is no jurisdiction to administer in the state courts causes which are so clearly defined in this act, and no ground for applying the doctrine which prevails where jurisdiction is concurrent giving priority to that which is first obtained."

As I said, this has been repeatedly decided. In the case of In re Rouse, Hazard & Co., 91 Fed. 96, decision by Judge Jenkins, of the circuit court of Appeals, for this circuit, it is said: "The bankrupt act by its terms, went into full force and effect upon its passage, July 1, 1898, and, notwithstanding the provision that no voluntary petition should be filed within one month of the passage of the act, and that no petition for involuntary bankruptcy should be filed within four months of the passage of the act, the bankrupt law was operative from the date of its passage, and was effective from that date to supersede the insolvency laws of the several states. Manufacturing Co. vs. Hamilton (Mass.), 51 N. E. 529; Blake vs. Francis-Valentine Co., 89 Federal 691; In re Bruss-Ritter Co., 90 Fed. 651."

In the same volume at page 237, in the case of Lea et al. vs. George M. West Co., the court holds the same doctrine and says: Coming to the consideration of what action should be taken by this court, where the state court has entered upon the administration of the trust estate by reason of the general assignment of the bankrupt, while every reasonable effort should be exerted to avoid even an apparent conflict of jurisdiction between state and federal courts, this case is apparently free from difficulty, as it will not be seriously maintained that the act of bankruptcy itself can be made the basis of dispossessing the bankrupt court of its juris-

diction. The constitution of the United States authorizes Congress, in its wisdom, to enact bankruptcy legislation, and when such action is taken it is the supreme law of the land on the subject. Under the recent act, the district courts of the United States alone are made courts of bankruptcy within the states, and are vested with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings. . . . The power of the bankrupt court in the premises is plenary, and under section 711, Rev. St. U. S., its jurisdiction in bankruptcy cases is superior to, and not concurrent with, the state courts."

In 92 Fed. on page 135, in the case of In re Smith et al. Judge Baker, the former judge of this district, held: That in the case of a voluntary assignment, where, the property was in the hands of the trustee under the deed, it was in *custodia legis*—in the custody of the court, under its control—"the administration of the debtor's estate so assigned is placed under the control and jurisdiction of the proper circuit court of the state." A motion was made in this court for a summary order to require the assignee to turn the property over to the receiver appointed by this court. And the court says: "The assignee under the inoperative state law takes no title, as against the creditors by the deed of assignment; and all of his acts touching the estate of the bankrupt, as well as all acts by the state court in the administration of the same, are unauthorized and void, and will be treated as nullities wherever drawn in question." The distinction was attempted here by one of the defendants while on the witness stand, between the jurisdiction of the person and the property of the bankrupt. He conceded that the Federal Court had jurisdiction of the person of the bankrupt, but claimed that it did not have jurisdiction of

the property. Judge Baker said: "No question of concurrent jurisdiction, or of the conflict of jurisdiction can possibly arise. The jurisdiction of the bankrupt court is supreme, it is exclusvie, and the acts of the state courts are unauthorized and void, because jurisdiction over the person and *estate* of the bankrupt is drawn to, and vested exclusively in, this court by the adjudication of bankruptcy."

In the same volume is the case of In re John A. Etheridge Furniture Company (92 Fed. 329), a case decided by Judge Barr, District Judge, the predecessor of Judge Evans, in the Louisville District. In this case W. W. Watts, one of the defendants here, appeared for the petitioning creditors and procured from Judge Barr a summary order—procured first the appointment of a receiver upon a petition in bankruptcy, and then procured a summary order requiring the assignee, I think it was, in a voluntary assignment proceeding, to forthwith turn that property over to the receiver of the Federal court. And in that decision, procured by this defendant Watts, the court said: "Subsection B of section 71, provides: 'proceedings commenced under said insolvent laws before the passage of this act shall not be affected by it.'" And the court proceeds: "This would clearly indicate that proceedings commenced after the passage of the bankrupt act can not be effectual to prevent the administration of the bankrupt estate in bankruptcy. To allow the bankrupt to select the trustee to administer upon his estate, instead of the creditor's, as provided in the bankrupt act, or to allow the state court to take jurisdiction of the estate of the bankrupt, and administer and distribute it, would effectually destroy the efficiency of any bankrupt act that might be enacted by congress, and thus effectually destroy the power granted to congress to pass a bankrupt act."

In 94 Federal, 633, in the case of *in re* Richard, decision by Judge Purnall, in the Eastern District of North Carolina, it is held:

> "Except as provided in the act, such as section 6, which provides that the passage of the act shall not affect the exemptions allowed where the bankrupt has his domicile, the state law is suspended and inoperative after an adjudication in bankruptcy. The bankrupt court takes jurisdiction *of the estate* and all matters pertaining thereto, and will administer the same to a final settlement."

In the case of Blake, Moffitt, and Towne v. Francis-Valentine Co., 89 Fed. 691, it is said:

> "But where the proceeding are involuntary the debtor is not, and can not be, adjudged a bankrupt until the return and hearing of the order to show cause, and will not then be adjudged a bankrupt if he has any good and sufficient defense."

In re Lady Bryan Ming. Co. (6 N. B. R. 262, Fed. Cas. No. 7980), where a creditor had filed a petition praying that the corporation might be adjudged a bankrupt, and at the same time obtained an injunction similar to the injunction in this case, the Court, upon motion to dismiss the injunction, held that the district court, as a court of bankruptcy, might, in the exercise of a lawful jurisdiction, restrain by injunction the sale of property under an execution issued from a State court before the commencement of proceedings in bankruptcy. In the course of the opinion, the Court said:

> "'Looking at the first section of the bankrupt act, it is difficult to imagine how a more unrestricted jurisdiction over matters in bankruptcy could have been granted. All the assets and all the parties in interest are to be brought before the court, priorities adjusted, liens ascer-

tained and liquidated, and the different funds and assets marshaled and distributed. The grant of these powers carries with it the right to employ such process, mode of procedure, and remedies as are indispensable to make the grant effectual. In this case the real estate levied on is assets and power to collect the assets is given. But this power is of no avail in this proceeding unless the court can preserve the assets until the question of bankruptcy is determined.'"

It was said upon the argument here, I may say, that the cases where summary proceedings have been authorized are cases in which there were voluntary assignments, where the assignment constituted an act of bankruptcy, but that no case can be found where the property was taken from a receiver of a state court. I have already cited several cases, one particularly by Judge Hodgett and one by Judge Seaman, in this circuit. In the case of *in re* Lengert Wagon Co., 110 Fed. 927, the court said:

"Certain judgments were entered against the Lengert Wagon Company in the Supreme Court of the State of New York and thereunder, on the 20th of September, 1901, property of the corporation was levied upon by the Sheriff of New York County under executions issued upon the judgments. Thereafter proceedings were instituted in the State Court by the directors of the corporation for a voluntary dissolution thereof on the ground of the insolvency of the corporation, and a temporary receiver of the property and effects of the corporation was appointed by an order of the court dated the 23d of September, 1901. On the 25th of September, 1901, involuntary proceedings against the corporation were commenced in this court. On the 27th of September, 1901, a receiver of the property of the bankrupt was appointed under section 2 (3) of the bankruptcy act, and an attempt made by him to obtain possession of the property. This was resisted by the receiver and sheriff in the State Court and the receiver in this court now

applies for an order specifically directing those officers to turn the property over to him. The contention on their part is that, as the state court obtained jurisdiction of the matter and possession of the property before the proceedings were instituted in this court, the possession can not be disturbed by process issued from this court; citing In re Chambers 3 Am. Bank R. 537, 98 Fed. 865; Trust Co. v. Bembow, 3 Am. Bank R. 9; 96 Fed. 514. But the proceeding in the State Court is one incident to the insolvency of the corporation, and it seems to be well settled that the bankruptcy gives exclusive jurisdiction to the United States Court in such matters, where proceedings are properly instituted, and ousts the State Courts of all jurisdiction with respect to the possession or distribution of insolvent estates. Tua v. Carriere, 117 U. S. 201; In re Smith, 92 Fed. 135; In re Independent Ins. Co., Fed. Cas. No. 7018; Thornhill v. Bank, Fed. Cas. No. 13992; Griswold v. Pratt, 9 Metc. (Mass.) 16; In re Storm 103, Fed. 618."

In the case of *in re* Storck Lumber Co., 114 Fed. 360, decision by Judge Morris in the eastern district of Maryland, where a proceeding was brought by a stockholder against the corporation alleging its insolvency, a receiver was appointed, and subsequent to the appointment of that receiver in the State court an involuntary proceeding in bankruptcy was commenced in the United States District Court, and the question directly arose as to whether the receiver appointed in the bankrupt proceedings was entitled to take the possession of the property away from the receiver of the State court. The Court held that he was so entitled and said: "The Maryland Statutes for winding up insolvent corporations is in the nature of a proceeding in insolvency." . . . "The National Bankrupt act of 1898 superseded the State insolvent laws, and now, when commercial and manufacturing corporations are so numerous, and are sometimes used, as in this case, more as a cover from individual liability

than for legitimate uses, it can hardly be supposed as the bankrupt act especially provides for proceedings against commercial corporations, that it was intended that such a corporation could commit acts of bankruptcy and escape the provisions of the bankrupt act by applying to be wound up under the State statute, and thus defeat the operation of the bankrupt law." Citing a number of cases. As I have said, the circumstances surrounding the institution and progress of the suit down there at New Albany show that M. Zier, the principal stockholder and Vice-President and Manager of the corporation, selected the receiver, and it was just as much the act of the Bankrupt as if it had made a voluntary assignment and selected the trustee.

Now on this question of summary proceedings, without taking the time to go over it, the Supreme Court of the United States has held as late as the case of White vs. Schloerb, 178 U. S. 542, that the district court sitting as a court of bankruptcy has the power by summary proceedings to take from an officer of a state court property which belongs to the bankrupt estate. It has been decided in several of the cases which have come before the Supreme Court of the United States that that power exists and the only question made in those cases was as to whether or not the possession of the person from whom the property was sought was adverse; and as I have stated here before, when that question was here originally before this court, that was the contention made by the counsel for the receiver in the state court. But it has been decided by the Supreme Court of the United States several times that an assignee in the case of voluntary assignment does not hold adversely. It has been decided that a purchaser who purchases from an assignee under a voluntary assignment does not hold adversely, and that property can be taken from such purchaser

by summary proceedings. It has been held where a petition was brought against a man to put him into involuntary bankruptcy, that his agent, who had received from him cash prior to the institution of bankruptcy proceeding, could be compelled by a summary proceeding to turn that cash over to the trustee.

The Federal Courts, the bankruptcy courts, have in a number of cases in addition to those which I have cited, held that the jurisdiction is exclusive and the power to issue a summary order does exist.

But that is not all. The Supreme Courts of many of the states have gone farther than the Federal Courts. In the case of Lothrop vs. Highland Foundry Company, 128 Mass. 120, in a decision by Judge Gray, who was then chief justice of the Supreme Court of Massachusetts and who was afterwards as you all know an associate justice of the Supreme Court of the United States, who decided the case where property had been sold to a purchaser as I have stated, used this language in speaking upon the question as to whether or not an enactment of a bankrupt law suspended the state law:

> "The omission of the legislature of the commonwealth to make any regulations whatever as to the suspension or revival of the operation of the insolvent laws, by reason of the contemplated or the actual enactment or repeal of the last bankrupt act, can hardly be explained on any other hypothesis than that it was considered to be settled by the judgments of this court, that no such legislation was necessary, either to suspend the operation of the insolvent laws so long as the bankrupt act continued in force, or to revive the operation of all the provisions of the insolvent laws, as if they had never been suspended, so soon as the bankrupt act was repealed: and that the effect, and the only effect, of the bankrupt act upon the insolvent laws was to suspend, so long as it was in force, the *right to institute* proceedings under those laws in cases within its provisions."

The Supreme Court of Massachusetts in a recent case, decided since the present bankrupt law went into force, Parmenter Mfg. Co. v. Hamilton, et al, 51 N. E. 529, goes over this whole question and among other things says:

"The question in this case is whether this act so far superseded the insolvency laws of this commonwealth from the time of its passage as to deprive our courts of jurisdiction to entertain petitions for the commencement of insolvency proceedings filed after July 1, 1898. This depends upon upon the intention of Congress, as manifested by the language above quoted. Of the power of Congress to pass an act having this effect there is no doubt. Constitution of U. S., Art. 1, Sec. 8, Cl. 4; Griswold vs. Pratt, 9 Metc. 16; *in re* Kline, 1 How. 277, 280; Sturgress vs. Crowninshield, 4 Wheat. 122, 192; Ogden vs. Saunders, 12 Wheat. 213, 369. The language is materially different from that of the bankruptcy act of 1867, and from that of the earlier bankruptcy law of 1841. . . . The argument that the change in question was intentional is almost irresistible. The act is 'to go into full force and effect upon its passage;' that is to say, the rights of all persons in the particulars to which this act refers are to be determined by the act from the time of its passage. Among these rights is the right to have insolvent estates settled in bankruptcy, under the provisions of the act, including the rights to have acts of bankruptcy affecting the settlement of estates, determined by it, to have the rights of debtors to file voluntary petitions, and of creditors to file involuntary petitions, determined by it, and to have preferences and liens governed by the provisions of it. These provisions affecting the rights and conduct of debtors and creditors are different from those previously existing in most of the states, and perhaps different from those found in the laws of any state, and they supersede all conflicting provisions. The only limitation upon the full and complete operation of the act upon its passage is that the right to begin proceedings is postponed one month in the case of voluntary petitions and four months in the case of involuntary petitions. Whenever the proceedings are commenced the conduct of the parties after

the passage of the act is to be tested by its requirements. The only saving clause affecting the jurisdiction of State courts, provides for cases commenced in those courts before the passage of the act. The plain implication is that proceedings commenced in the State courts after the passage of the act are unauthorized. This is in accordance with the earlier language giving the statute full force and effect from the time of its passage, except that the filing of petitions is to be postponed for a short time. We are of the opinion that the language was chosen to make clear the purpose of Congress that the new system of bankruptcy should supersede all state laws in regard to insolvency from the date of the passage of the statute."

The Supreme Court of Illinois, in the case of Harbaugh v. Costello, *et al.*, 56 N. E. 363, decided this question the same way. In that case a proceeding was attempted in the state court under the insolvency laws of the State of Illinois, after the passage of the bankruptcy act, when no proceedings had been commenced or attempted to be commenced in bankruptcy; and yet the state court held that it was without power or authority after the passage of the bankrupt act to entertain jurisdiction of such a suit. The court by McGruder, J., say: "It is provided in section 8 of the first article of the constitution of the United States that 'congress shall have power . . . to establish . . . uniform laws on the subject of bankruptcies throughout the United States.' In interpreting this provision of the constitution, it has been held that the power to pass insolvent or bankrupt laws was not thereby taken away from the states until congress itself should exercise the power thereby conferred by the passage of a bankrupt law. When, however, a bankrupt law is passed by congress, any state law upon the subject which may exist is suspended in its operation. As soon as a national bankruptcy act goes into effect, state insolvency laws are suspended and become inoperative, at least so far as they conflict with

the acts of congress upon the subject, and so far as the embrace the same subject matter as is embraced in the act o congress."

And, citing from Black on Bankruptcy, the Court says:

> "The passage of a national bankruptcy law b congress renders it supreme. The state laws in forc must yield to it, and can no longer operate upon person or cases, within the purview of the federal statutes. Th latter does not, indeed, repeal or destroy the state law on the same subject, but it suspends their operation. I the state law and the federal act operate upon the sam subject matter, upon the same property, upon the sam rights, and upon the same persons, creditors as well a debtors, or may so operate, they can not go togethe without direct and positive collision, and is such cas the federal enactment suspends or supersedes the stat law."

In the case at bar, as I have said, there was a deliberat attempt on the part of the Floyd Circuit Court to set up court of bankruptcy. It is in evidence here that the entir property of this now bankrupt corporation was placed in th hands of the receiver of that court, every asset which i owned. The purpose, object, scope and effect of that pr ceeding was to wind up that insolvent corporation and di tribute its assets among its creditors. In substance an effect it was a bankruptcy proceeding by a court whic constituted itself, against the constitution and the laws o United States, a bankruptcy court. Since the issuing o the citation for contempt herein, Kelso, the receiver of th state court, has delivered the plant and property of th bankrupt to the receiver of this court without any orde of the state court in the premises, and the receiver of thi court is now in possession of the same. If the possessio of the receiver of this court was illegal when the propert

was wrested from him, it is illegal now. Since the commencement of the trial of these defendants, owing to the startling disclosures made in the evidence here, the fraudulent preference of $9,600 has been returned and paid in money to the receiver of this court.

If counsel for these defendants are right in their contention that the receiver of the state court is entitled to the possession of the plant, we shall then have the property of the bankrupt divided between this court and the state court and each of these courts will distribute a part of the estate between the same creditors and at the same time.

If the exclusive jurisdiction of the bankruptcy court is not upheld or is subordinated to some indefinable rule of comity, which is superior to the law and to the legal rights of parties, such a case of divided jurisdiction may arise at any time.

It has been said that if the amendment of February 5, 1903, had been in force when this State Court receiver was appointed, that then, following the analogy of the voluntary assignment cases, the receiver appointed by this court would have the power summarily to take charge of the property. But it is maintained that the amendment of February 5, 1903, was not in effect, so far as any act of bankruptcy, prior to the time of its passage, is concerned. This amendment took effect on February 5, 1903. On February 6, 1903, these proceedings in involuntary bankruptcy were commenced. Shortly after the original petition was filed, an additional petition, or an additional cause was alleged in a supplemental petition filed under this amendment, reciting the fact that a receiver had been appointed in the State Court at New Albany for M. Zier and Company. The question now is whether or not after the passage of this amendment the appointment of a receiver, or the having suffered a receiver

to be appointed within four months prior to that time, constituted an act of bankruptcy? It has been said that the question here is whether or not that amendment has a retroactive effect. It is well understood that congress has the power to pass retroactive laws if it sees fit. The question then, is, whether or not congress clearly intended the amendment to be retroactive in this respect.

In the original act it was specifically provided that the act should go into force and effect on the first day of July, 1898. It was further provided that no petition for voluntary bankruptcy should be filed within one month, and no petition for involuntary bankruptcy should be filed within four months thereafter. When this amendment was made no such provision was put into it, and the last clause of it, the last section of it, provides:

> "The provisions of this amendatory act shall not apply to bankruptcy cases pending when this act takes effect, but such cases shall be adjudicated and disposed of conformably to the provisions of the said act of July first, eighteen hundred and ninety-eight."

To my mind the fact that in the original act it was provided that no petition for voluntary bankruptcy could be filed within one month of the taking effect of the act, and that no petition for involuntary bankruptcy could be filed within four months of its taking effect, while in the amendatory act there is no postponement of the time, clearly indicates that congress intended its provisions to apply to any act of bankruptcy defined by its terms committed within four months prior thereto. It seems plain that when congress passed this amendment and made no provision for the postponement of its effect, that it intended that it should go into effect immediately.

Not only that, but the wording of the amendment is very suggestive. The original act provides: "Acts of bankruptcy by a person shall consist of his having . . . or (4) made a general assignment for the benefit of his creditors." Now this fourth sub-division is amended as follows: "Or (4) made a general assignment for the benefit of his creditors, or being insolvent applied for a receiver or trustee for his property or because of insolvency, a receiver or trustee *has been*, put in charge of his property under the laws of a state, of a territory, or of the United States." If it was intended that that amendment should have only a prospective effect, why didn't the act say "a receiver or trustee *shall be* put in charge of his property under the laws of a state, of a territory or of the United States?" But it is not necessary for this court to decide this point, and I do not decide it now. If this act took effect from and after its passage in the sense that the appointment of a receiver within four months prior to the filing of the petition in this case, constituted an act of bankruptcy that gave the court jurisdiction, I believe this to be the law, and if it were necessary to decide it in this case, I should so hold until some higher authority declared the law to be otherwise.

But aside from this additional cause setting forth the appointment of the Receiver there were in this petition legal and sufficient causes for an adjudication of bankruptcy alleged; and since the filing of the petition the proper notices have been given, the proper time has elapsed, the alleged bankrupt and those interested in it have suffered a default, and the corporation known as M. Zeir and Company has been adjudged by this court a bankrupt. So the authorities are, I think, plain, that when this court appointed Mr. Connor as Receiver, it had the power to arm that Receiver with sufficient power to take that property from

the Receiver of the State Court. If that is not the law, then a number of judges, including some of the best in the country, have been badly mistaken.

But that is not the question here. These defendants are not charged with resisting any summary order of this court. Why, gentlemen have with so much vehemence and vociferousness argued that question before this court, the court itself can not understand. That is not the question here at all. The facts in this case and the records in this court show that after Frederick D. Conner was appointed Receiver by this Court, the property which was then in the possession of the Receiver of the Floyd Circuit Court, as I have stated, was voluntarily and freely turned over to him as Receiver of the United States Court. For two days he held that possession, and after night, as I have said, certain persons went to that plant and forcibly ejected the Receiver of this Court from that property. The question here is: Was that a contempt of this Court? The men who committed the overt acts on that night have been found guilty of contempt, and a portion of them have suffered their punishment, and the remainder of them are now suffering theirs. The question here is: Whether or not as against the defendants, they not being present at the former trial, they are entitled to have it considered in that way; whether or not the persons who took forcible possession of this property away from the Receiver of this Court were guilty of contempt of this Court; and, in the second place, if such persons were guilty, did these defendants, or either of them, aid, encourage, counsel, command, or assist those persons in doing that unlawful act?

It was stated here yesterday upon the argument that this Court had the undoubted legal right to the possession of this property, but complaint was made of the manner in which it

got the possession. It is the first time that ever the Court has heard that complaint could be legitimately made as to the manner in which a person obtained possession of the property which he was conceded to have the lawful, legal, undoubted and exclusive right to the possession of. That the persons mentioned, with these defendants, in disregard of the process and orders of this court, went after night and with force wrested the property from the receiver of this court, there is no question. But it has been said that there is a certain thing which is above law, and that is comity, so called. It was announced here yesterday as a doctrine of necessity, and it was gravely argued, (I think I put it mildly when I say earnestly argued), that such comity exists between the federal and state courts that it was the duty of the receiver of this court to go into the Floyd Circuit Court, subject himself to the jurisdiction of that court, and humbly ask that court for an order requiring its receiver to turn this property over. It apparently was forgotten that that comity and courtesy was extended to the Floyd Circuit Court; that the receiver of this court went into that court and respectfully petitioned the judge of that court to order his receiver to turn it over, as by law all men must concede he was bound to do. But he not only did not rule upon the petition; he contemptuously ignored it, and as I have said continued it until the next term. After the removal of the receiver of the state court, who turned the property over to the receiver of this court, the Floyd Circuit by a series of forged records appointed Mr. Kelso as receiver. Now counsel who argued the law of this question yesterday spoke frequently about the converse of the propositions that he was arguing. If comity required the receiver of this court, which had exclusive jurisdiction, to go into a state court, which had no jurisdiction, and

humbly ask that court to order its receiver to turn the property over to him, why was not Mr. Kelso, the receiver appointed by that court, in duty bound, in exercising this same generous principle of comity, to come to this court and ask this court to order its receiver to turn the property over to him? He did not do it. He went after night by force and took possession of the property.

Now a great many authorities were cited here yesterday by counsel who argued the law question, in which expressions were used about the orderly procedure in courts. I want to ask who has been guilty of the breach of the orderly procedure? This court in the exercise of its undoubted constitutional and legal authority appointed a Receiver to take possession of this property. In an orderly and regular manner he went before the Floyd Circuit Court and asked that that property be turned over to him. Subsequently it was turned over to him. There was another Receiver appointed by the Floyd Circuit Court, and in defiance of the orderly and regular procedure that has been so much talked about, Mr. Kelso, instead of coming up here, as he ought to have done, if he was in earnest and thought he was right, went after night and pitched the Receiver of this Court out of that plant.

A number of cases were cited here yesterday by counsel who argued the legal questions that were supposed to be involved here, to the effect that in certain cases where State Courts had clear jurisdiction, Federal Courts would not interfere; and with a good deal of emphasis, a certain case decided by Chief Justice Fuller, and reported in 23 Supreme Court Reporter, at page 67, was exploited as the latest decision of the Supreme Court of the United States upon the questions there involved, (Metcalf v. Barker, 187 U. S., —). During this argument I called attention of the

counsel to the case of Clark v. Larrmore, decided by the Supreme Court of the United States. I stop by the way to say that the case of Metcalf v. Barker was decided December 1st, 1902, and this case of Clark v. Larremore, which I have here upon my desk, the opinion being written by Mr. Justice Brewer was handed down on February 23, 1903. The case of Metcalf v. Barker, decided by Mr. Chief Justice Fuller, holds this :—and I stop long enough to call attention of counsel to it: "Judgment creditors of a bankrupt by commencing a judgment creditors' action more than four months before the petition in bankruptcy is filed acquired a lien on the property of the bankrupt, of which they are not deprived by the bankruptcy act of July 1, 1898, section 67 f, because the judgment enforcing the lien is recovered less than four months prior to the filing of such petition, although by that section all judgments obtained against the bankrupt within that period are avoided, as this provision must be regarded as referring only to judgments creating liens, and not to the judgments which enforce an otherwise valid, pre-existing lien." I have not had the time to go through all the cases cited by counsel for the defendants from Peck v. Jenness, in 7th Howard, I believe it is, down to Clark v. Larremore, decided February 23, 1903; but I think I am safe in saying that not one of those cases which apparently sustain the contention of the gentlemen here, differs from this case of Metcalf v. Barker, in this essential particular, namely, that each one of them was a suit to enforce a valid pre-existing lien. This Court does not doubt that a lien existing prior to four months of the filing of a petition in involuntary bankruptcy, the enforcement of which is being attempted in a state court prior to the filing of the petition in bankruptcy can not be disturbed by the summary process of this court. There is no question about

that. But the bare statement of the question shows that it has no application here. And in this decision of Clark vs. Larremore of February 23, 1903, the distinction is squarely drawn between the cases cited to the Court and other cases which might be mentioned. I will call the attention now of the gentlemen to this case. It has been gravely argued here that when once the state court gets jurisdiction of property, that then this court can not disturb its possession without its assent. The case which I hold in my hands arose upon this state of facts; one man procured a judgment against another, had an execution issued, placed it in the hands of the sheriff, and the sheriff levied upon the defendant's land, sold it, and had something like $12,000 of the purchase money in his hands. At that time, after the judgment had been rendered in the state court, after the execution had been issued and levied, after the property had been sold and the money was in the hands of the sheriff, an involuntary petition in bankruptcy was filed against the debtor, and by summary order issued by the bankruptcy Court, the sheriff was ordered to turn the money over to the Trustee.

And the Supreme Court of the United States held that that was proper.

That is what Justice Brewer says:

"The judgment in favor of petitioner against Kenney was not like that in Metcalf v. Barker (187 U. S. ———), one giving effect to a lien theretofore existing, but one which with the levy of an execution issued thereon created the lien." And that is what makes the difference.

So then this court is of the opinion that it had the power when this application for a receiver was made to appoint a receiver; that it had the power by summary process to take the property from the receiver of the state court and place it in the possession of the receiver of this court.

But as I have said, that is not the question here. The court holds that this property having been placed peaceably, quietly and voluntarily by the then custodian of it in the possession of the receiver of the United States court, all persons who thereafter interfered with that possession, knowing the facts, are guilty of a gross contempt of this court.

Considerable has been said about the power of this Court to punish for contempt. Some discussion has been had as to whether or not it is an inherent power, or whether or not it is given by Section 725, of the judiciary act. The question has been raised as to whether that act has conferred the power or is a limitation upon it. This Court does not think it makes a particle of difference which view is correct, especially since it is given the power in the bankrupt law itself. Section 2 of the bankrupt act of 1898, in enumerating the powers of courts of bankruptcy, under subdivision 13, of Section 2, says: "To enforce obedience by bankrupts, officers, and other persons to all lawful orders, by fine or imprisonment, or fine and imprisonment;" so that whatever may be said about the source of the power, it is there sufficiently given in the bankrupt act itself. This Court has no doubt whatever that Kelso, and those with him, who went down on that Friday night and took possession of this property were guilty of a flagrant, a gross contempt of this Court. And they have been punished therefor.

The question now before this Court is, whether or not these defendants or either of them had such connection with that transaction as to make them guilty also? The evidence shows that when W. W. Watts agreed with Mr. Jewett to turn this property over to the Receiver of the United States Court, and left Indianapolis, that he went to Louisville, his home. He himself swears that the nearer he got to Louis-

ville the more he thought he had done wrong in voluntarily offering to turn this property over. He went to his friend Sachs, the other defendant, and procured him to go with him to New Albany the next day for the purpose, as they claim of making peace for Watts with Judge Utz. W. W. Watts, and his brother J. R. Watts, D. A. Sachs, and both his brothers, Morris Sachs and Joseph Sachs, have testified that W. W. Watts is a very busy man with a large practice in Louisville; that D. A. Sachs is a very busy man with a large practice in Louisville. The uncontroverted fact is that both of these gentlemen went to New Albany on Wednesday, the 18th day of February, and spent the entire afternoon there. They spent most of the day Thursday there. They spent most of Friday there. They spent, if I remember the evidence right, most of Saturday there. What were they there for? According to their testimony they were there to appease the wrath of Judge Utz.

So far as the defendant Sachs is concerned the evidence hereby clearly shows that he took an active part in the proceedings which culminated in the removal of the New Albany Trust Company by the Floyd Circuit Court and in the appointment of Mr. Kelso as the receiver of that court: that it was upon a petition sworn to and largely prepared by him that the court acted in the removing of the New Albany Trust Company and in appointing Kelso as receiver; that he was there during the consultation with reference to the matter; that he aided and assisted in planning the line of battle for taking the property from the receiver of this court; that he assisted in the preparation of the processs issued to the sheriff under which the sheriff acted; and this court has no doubt whatever that he was at the plant of M. Zier and Company Saturday afternoon after Kelso was in possession, with Kelso looking over the plant, and making preparations with regard to the running of it.

It has been said here in argument by counsel that there is an irreconcilable conflict in the evidence. It is so stated by counsel on both sides. It has also been stated by counsel that it is not their province to say where the truth lies and who committed perjury. It is the province of the court to say where the truth lies and this court believes that D. A. Sachs in many important and material particulars committed willful and corrupt perjury in this case. The stenographer of Mr. Kelso, who has no interest whatever in this case, swears positively that Mr. Sachs took an active part in the preparation of the instrument which he signed and swore to. She swears positively that he took an active part in the preparation of the papers and proceedings which were immediately used to wrest the possession of this property from the receiver of this Court. Mr. Kelso swears the same thing, and Judge Utz swears the same thing. Kelso swears that Mr. Sachs was with him in the plant looking it over on Saturday, canvassing the situation, and advising with reference to starting the plant and that it was agreed between them that the plant should be started on Monday. Mr. Ruoff, who was the night watchman swears Sachs was there. Another gentleman, a deputy clerk, swears that he met Sachs on the street in New Albany, that evening when Sachs told him he had been out to the plant and he did not think the property was worth $5,000.

That Mr. Sachs has taken the witness stand here and has deliberately sworn that he had nothing to do with the preparation of that answer, that he can not deny that he signed it and swore to it, because it is in evidence in the record, but that he had nothing to do with its preparation, that he had nothing whatever to do with the proceedings which culminated in the wresting of this property from the receiver of this Court, that he was not at the plant that afternoon. So

I say that this Court has concluded that he committed willful and corrupt perjury here.

Another circumstance; Mr. Sachs testified that when he left Judge Utz on Wednesday evening, Judge Utz requested him, who, until that afternoon, was a stranger to him, a resident of Louisville—Mr. Sachs had never transacted any business as I recall the evidence in New Albany prior to that time—that Judge Utz requested him and Watts, both strangers in New Albany, to notify counsel interested in this case, for the creditors to appear in his chambers next morning. Going from Judge Utz's office they went to Jewett's office. It is in evidence here, and there is no dispute about it, that Mr. Jewett called up Mr. Kelso that afternoon over the telephone and asked him how long he would be in his office and told him to wait that some people would be over to see him. There is no question that Watts and Sachs went over to see him that afternoon, and that they were there from a half to three quarters of an hour, and yet Sachs took the witness stand and swore that the only purpose they had in going to Kelso's office that evening was to notify Kelso that Judge wanted to see him in chambers next morning. As has been well said, it is a remarkable circumstance that Judge Utz should call upon these Louisville lawyers, strangers to him, to run errands for him, and it was a remarkable circumstance if the only purpose and object of their visit to Kelso's office that evening was to notify Kelso that Judge Utz wanted to see him the next morning; that he should not have had Henry Jewett tell him when he called him over the telephone that Judge Utz wanted to see him at his office next morning. And it was a remarkable circumstance that they should have gone to Kelso's office, these busy men, who did not want any business this side of the river (they say they have all on the other side they can attend to),

should go to Kelso's office that afternoon and spend from a half to three-quarters of an hour with him. So I find that Mr. Sachs is guilty of a flagrant contempt of this Court.

It is claimed for Mr. Watts that he went to New Albany and did everything he could to turn this property over to the receiver of this court. The evidence shows that Watts was continually declaring and protesting that this property should be turned over. Counsel for Mr. Watts, in the argument in his behalf yesterday afternoon, spoke of the responsibility which this court has, and the power which it has. I trust I fully realize the responsibility which is imposed upon me in this case; I know I take no pleasure in exercising the powers which are incident to my present position. Counsel in that same connection said that Mr. Watts, according to the evidence, had not done one thing or said one word, that no witness had testified to his having done one thing or said one word in furtherance of this wrongful enterprise.

Until Mr. Watts returned to Louisville and procured his friend Sachs to go to New Albany, Mr. Sachs was a stranger to that proceeding. Mr. Watts undoubtedly got Mr. Sachs into the proceeding. He was over there Wednesday. The evidence in the case shows that when Judge Utz finally decided, at whose instance I know not, to cite the New Albany Trust Company before him for contempt, that Mr. Watts respectfully requested that he be cited also. It is in evidence before this Court that before Mr. Watts was served with the citation to appear and answer the charge of contempt in the Floyd Circuit Court, he informed the gentlemen that he was going to a restaurant or saloon, I have forgotten which, where he would be, and to send the Sheriff there to serve him. He was in New Albany, during all the time that these proceedings were planned and he returned to

Louisville with Mr. Sachs late in the evening of Friday, only a short time before the final proceedings were taken to throw the receiver of this court out of the possession of that property.

I understand these gentlemen, in order to be punished must be found guilty beyond a reasonable doubt, but I do not understand that this Court is bound by the denials of Mr. Watts. If the circumstances surrounding this transaction clearly established to this Court's mind beyond a reasonable doubt that notwithstanding Mr. Watts' protestation and declaration as to his intention and desires—that notwithstanding that, if through Mr. Sachs or by assisting Mr. Sachs he had anything whatever to do with the transactions which culminated in this unlawful act, he is guilty and this Court must find it, if the evidence shows it. Mr. Watts, his counsel, asks this Court to believe, throughout those four days, when the evidence in this case shows that he was associating with Judge Utz socially, drinking with him in saloons, hobnobbing with him, in the language of the street, during those four days, was there with his friend Sachs for no other purpose than to appease the wrath of Judge Utz against Watts. It is needless for me to say that this Court does not believe one word of it—not one word of it. I can not believe it. The only solution of his conduct that can be reached consistently with the evidence is this; according to his own testimony, the nearer he got to Louisville, the more he concluded that he had made a mistake in offering to turn the property over. But he had offered. Mr. Watts is one of those lawyers who prides himself on keeping his agreements made in court. I have known many such. Therefore, he did not wish to put himself in the position of openly violating the voluntary promise he had made in this Court. So he procured his friend Sachs to go with him to

New Albany and Sachs is put forward as the active manager of this thing and Watts remains in the background and continually protests that he wants to turn this property over and keep his agreement with the United States Court. He is like some other people. He protests too much. So I have come to the conclusion that Mr. Watts is guilty of a flagrant contempt of this Court.

Up to this time, so far as the law is concerned, my way seems to be clear. If I am mistaken about it, the gentlemen have their remedy. If this Court were infallible there would be no need for the Circuit Court of Appeals and still less need for the Supreme Court of the United States. It is the duty of this Court, in so far as it can, to ascertain what the law is, and, having ascertained what it is, as nearly as possible, to so declare it. I have not had much difficulty in coming to the conclusion that this Court had jurisdiction to do what it has done. I have not had much difficulty in coming to the conclusion that these defendants have been guilty of contempt of this Court. But the question as to what punishment should be meted out to them has given me considerable trouble. It has been a matter of considerable concern to me that at the very beginning of my career here, I have been confronted with this state of affairs. I can not but believe that the gentlemen who have taken part in these proceedings forget that it makes no difference who occupies this bench. The court is the same. My professional experience, has been confined largely to the state courts, and those courts with which I have been familiar were pervaded with an atmosphere of respect and reverence for the dignity and power and purity of the United States Courts. And when it became apparent to the present occupant of this bench that any court, or any officer of any court, or any person

within the district would undertake to do what these gentlemen have done, it was a matter of very great astonishment to me. I was urged to exercise the extreme powers of this court at once. I delayed. When the gentlemen were here before me on the 17th of February, after a full discussion on their part, in which I indulged them far more than they were entitled to, they voluntarily offered to turn this property over, and they did it. And therefore, that such a proceeding as did happen should happen was a matter not only of surprise, but of the utmost consternation, I think, to everybody, as well as to this court. If this court is going to administer justice as it sees it, it necessarily follows that the dignity and the power of the court must be maintained. All men, and lawyers especially, must understand that if they disagree with the court in any order it makes, they must not set themselves up to resist those orders. I have decided in this case—and I dislike exceedingly to do it—but I have decided in this case that my duty compels me to imprison these men. The only question in my mind is as to the term.

Evidence has been introduced as to their previous good standing. I believe both of them realize the mistake they have made and the wrong they have done. If they had come to this court even upon the service of the citation to show cause, and had acknowledged their wrong, it might have been different. They are lawyers; they have here, by their counsel, after a manner which I think is not entirely excusable, criticised the action of this court. They have asserted here, by their counsel, that this court has assumed a jurisdiction it did not have and has issued orders it had no lawful authority to issue. They have, through their counsel urged that, but on the witness stand, as witnesses, they have apparently tried to convey the impression to this court that they

recognized the lawful authority of the court to act—that they recognized it from the beginning. Indeed, Mr. Sachs swears that he himself said, when he heard of the order of February 17th, "That ends it." In other words, while through their counsel, they attack the jurisdiction of this court and loudly proclaim that this court has exceeded its powers and jurisdiction, that the orders which they have violated were no orders at all, and they have a right to violate them, they, on the witness stand, have conceded that the authority was rightfully exercised, and they ask this court to believe that they have done nothing whatever to interfere with it.

The sentence of the court is (and Mr. Sachs and Mr. Watts may stand up) that you are each guilty of a contempt of this court, as charged in the information and in the rule to show cause, and that you stand committed to the jail of Marion County for sixty days and pay the costs taxed against you, and the marshall is charged with the execution of this judgment.

And afterwards, to-wit: on the 14th day of March, 1903, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled matter were had, to-wit:

Come now the defendants William W. Watts and D. A. Sachs and file their Bill of Exceptions in the above entitled matter in the words following, to-wit:

Be it remembered that upon the calling of these proceedings for trial as to the defendants D. A. Sachs and William W. Watts, the said defendants enquired of the Court whether they were required to respond to the rule awarded against them in the above entitled bankruptcy proceedings, or to plead to the above entitled information filed by the United States District Attorney, whereupon the Court ruled and adjudged that the said defendants are re-

quired to respond to said rule and plead to said information con-jointly, and thereupon the said defendants each filed a separate response and plea.

Be it further remembered that upon the trial of said rule and information as to said defendants, the evidence of sundry witnesses was taken on behalf of the United States, and the evidence of sundry witnesses was taken on behalf of said defendants, and each of them, and certain documentary evidence was adduced on behalf of the United States, and also on behalf of said defendants, and each of them, all of which appears in full, together with the objections made thereto by either party and the rulings of the Court thereon and the exceptions thereto in the report of the Official Stenographer of this Court, which said report is here referred to, and filed herewith marked "X," and said evidence adduced and heard was, and is all the evidence adduced, and heard upon the trial.

Said stenographic report is made a part of this bill of exceptions, and is made part of the record.

And this bill of exceptions, being examined and approved by the Judge of this court, is signed by him, and filed, and made part of the record this 14th day of March, A. D. 1903.

ALBERT B. ANDERSON,

Judge.

Exhibit C.

Joseph T. Ryerson & Son
vs.
M. Zier & Co.
} No. 5575.

Comes now Frederick D. Connor as receiver by George H. Hester his attorney, and by leave and order of the Court and upon his own motion, makes himself a party to this proceeding, and thereupon by leave of the Court files his verified petition showing his appointment as receiver of said M. Zier & Co. by order of the United States District Court for the District of Indiana and praying this Court for an order requiring the said New Albany Trust Company, as receiver of said M. Zier & Co. to turn over and surrender to him said Frederick D. Connor, as receiver in bankruptcy, the property of said M. Zier & Co. of which the said New Albany Trust Company as receiver of said M. Zier & Co. under the orders of this Court is custodian and the matter of said petition is now continued until the next term of this Court.

IN THE FLOYD CIRCUIT COURT.

JANUARY TERM, 1903.

Jos. T. Ryerson & Son
vs.
M. Zier & Company.
}

To the Honorable W. C. Utz, Judge of the Floyd Circuit Court:

Frederick D. Connor, receiver appointed by the United States District Court for the District of Indiana, intervening in the above entitled cause, respectfully shows to the court:

That on the 11th day of February, 1903, by the con-

sideration of the United States District Court for the District of Indiana, upon the petition of the Inland Steel Company, John C. Thurston and John Dey, doing business as Dey Time Register Company, he was appointed by said court as receiver, with authority to take charge of all property of said M. Zier & Company and to hold the same in his custody until the further order of said court; that he has duly qualified as such receiver according to the requirements of the order appointing him, by filing his bond therein to the approval of the Hon. Albert B. Anderson, Judge of said court, and is ready to assume control of the property of said M. Zier & Company as soon as the same is turned over to him by the New Albany Trust Company, heretofore appointed as receiver in this cause by this court; a certified copy of the order of the United States District Court is filed herewith and attached hereto marked exhibit "A."

Your petitioner therefore, respectfully prays that said The New Albany Trust Company be directed and required to immediately turn over to this petitioner all of the property, assets, books, moneys and other effects of said M. Zier & Company now in its possession and control and to immediately file with this court its account in writing, showing the amounts of money collected by it and now on hand. The petitioner further prays that said The New Albany Trust Company be discharged as such receiver herein.

FREDERICK D. CONNOR,
Receiver of M. Zier & Company.

STATE OF INDIANA, }
County of Floyd. } *ss.*

Frederick D. Connor, being duly sworn on his oath says that the matters stated in the foregoing petition are true in substance and in fact as he verily believes.

FREDERICK D. CONNOR.

Subscribed and sworn to before me this 14th day of February, 1903.

CHARLES B. SCOTT,
Clerk F. F. C.
By William F. Ruoff,
Deputy.

INLAND STEEL COMPANY }
vs. } In Bankruptcy.
M. Zier & Company. }

Comes now the Inland Steel Company, petitioner in Bankruptcy herein, which having filed its petition to have M. Zier & Company declared a bankrupt, now files its verified petition alleging that an emergency exists for the immediate appointment by the court of a receiver herein to take charge of the property and effects of said M. Zier & Company pending the hearing of said petition and the appointment of a trustee in bankruptcy herein, which petition reads as follows: (here insert).

And the court being advised after due consideration, finds that the prayer of said petitioner ought to be granted and that a receiver ought to be appointed to take charge of the property and effects of said M. Zier & Company previous to the hearing of said petition and the appointment of a trustee herein.

It is therefore considered and ordered by the court that Frederick D. Connor, be, and he is hereby appointed as receiver herein of the property and effects of said M. Zier & Company, with authority to take charge and possession of all the same and particularly the goods, wares and merchandise, books, papers and effects of or belonging to said M. Zier & Company located at the city of New Albany, Floyd County, Indiana, and now in the hands of The New Albany Trust Company as receiver of said M. Zier & Company appointed by the Floyd Circuit Court, of Floyd County, Indiana. And said receiver is ordered and directed to take into his possession the sheet iron and boiler manufacturing plant in said city of New Albany, together with all the tools, machinery, appliances, material and finished products within and about said plant at said city of New Albany, which plant is located at the corner of Pearl and Oak streets of said city, and all other property of said M. Zier & Company wheresoever found and situated.

It is further ordered and adjudged by the court that The New Albany Trust Company be, and it is hereby required to deliver up to said Frederick D. Connor as receiver of the said property and effects of said M. Zier & Company now in its possession and to refrain hereafter from interfering in any way with the said receiver's possession and control of the same.

It is further ordered that before entering upon the duties of his said trust herein, the said Frederick D. Connor shall execute to the Clerk of this Court and file with the Clerk of this Court, a bond and sureties to the approval of this court in the sum of ten thousand dollars ($10,000), for the faithful discharge of his duties as such receiver and take the oath required by law of said officers.

February 11, 1903. ALBERT B. ANDERSON,
Judge.

I, Noble C. Butler, Clerk of the United States District Court, for the District of Indiana, hereby certify that the above and foregoing is a true and correct copy of an order made and entered by the United States District Court, for the District of Indiana, on the records of said court, at New Albany, Indiana, on the 11th day of February, 1903, of which records I am the proper custodian.

NOBLE C. BUTLER,
Clerk U. S. District Court.

[SEAL.] By George B. Cardwill,
Deputy Clerk.

UNITED STATES OF AMERICA, } *ss.*
District of Indiana. }

I, Noble C. Butler, Clerk of the District Court of the United States for the District of Indiana, do hereby certify that the above and foregoing is a full, true and complete copy of the petition of Frederick D. Connor, Receiver, etc., produced in evidence in said court in the cause of the United States vs. William W. Watts, D. A. Sachs, et al.

WITNESS my hand and the seal of said court, at Indianapolis in said District, this 12th day of March, A. D. 1903.

NOBLE C. BUTLER,
Clerk.

[SEAL.]

FREE COPY.

15 Orig.

Supreme Court of the United States.

In re WILLIAM W. WATTS, Petitioner.

Addenda to Exhibit B Filed with Petition.

B. G. [illegible] PRESS, LOUISVILLE, KY.

INDEX.

Indemnity Bond 3
Bond of Receiver. 5
Petition of Receiver for Instructions 6
Adjudication in Bankruptcy 8
Order of Reference 8
Information 9
Answer of Charles D. Kelso and Thomas Smithwick 11
Answer of Claude Sittason 25
Answer of Raymond J. Morris 30
Replies to answers. 37
Judgment against Kelso 38
Judgment against Morris, Sittason and Smithwick 38

Addenda to Exhibit B.

And said petitioner now files its indemnity bond herein in the words following, to-wit:

Know all Men by these Presents: That we, the Inland Steel Co. (a corporation organized under the laws of the State of Indiana) as principal, and The Fidelity and Deposit Company of Maryland and Louis Hartman, as sureties, are held and firmly bound unto M. Zier & Co., in the full and just sum of Twenty thousand dollars ($20,000) to be paid to said M. Zier & Co., or its assigns, to which payment well and truly to be made, we bind ourselves and our assigns jointly and severally by these presents.

Signed and sealed this 10th day of February, 1903.

The condition of this obligation is such that whereas, a petition in bankruptcy has been filed in the District Court of the United States for the District of Indiana against the said M. Zier & Co., and the said Inland Steel Co. has applied to that Court for the appointment of a receiver, with an order directing him to seize and hold the property of said M. Zier & Co. subject to the further orders of said District Court.

Now, therefore, if such Receiver shall be appointed and such order shall be made for the seizure of said property, and if the said Inland Steel Co. shall indemnify the said M. Zier & Company for such damages, as it shall sustain, in the event such seizure shall prove to have been wrongfully obtained,

then the above obligation is to be void—otherwise to remain in full force and virtue in law.

Signed and delivered in the presence of

[SEAL.] .....

.....

[SEAL.] FIDELITY & DEPOSIT CO. OF MD.
Witness: By Willis Mullen, *Gen. Agt. and*
L. C. WALKER. *Atty. in fact.*
[SEAL.] LOUIS HARTMAN.

IN THE U. S. DISTRICT COURT,

FOR THE DISTRICT OF INDIANA.

Inland Steel Company
vs.
M. Zier & Company. } In Bankruptcy.

I, George B. Cardwill, Deputy Clerk of U. S. District Court for the District of Indiana, at New Albany, Indiana, hereby certify that I have approved and I do now approve the Fidelity and Deposit Company of Maryland as surety on the bond of the petitioner in the above cause, which bond is for the sum of twenty thousand dollars ($20,000) and is attached hereto.

GEORGE B. CARDWILL,
Deputy Clerk U. S. District Court for the District of Indiana.

And afterwards, to-wit: on the 13th day of February, 1903, said Receiver filed his bond in the above-entitled matter, in the words following, to-wit:

Know all Men by these Presents: That we, Frederick D. Connor, as principal, and the Fidelity and Deposit Company of Maryland and Louis Hartman, as sureties, are held and firmly bound unto the United States of America in the penal sum of Ten Thousand Dollars ($10,000) for the payment of which we bind ourselves, our heirs, executors and administrators firmly by these presents.

Signed and dated this 12th day of February, A. D. 1903.

The condition of the above obligation is such, that whereas, on the 11th day of February, 1903, the said Frederick D. Connor was duly appointed by the United States District Court for the District of Indiana as Receiver in Bankruptcy, to take charge of the property and effects of M. Zier & Company, the alleged bankrupt therein, until the further order of the Court therein:

Now if said Frederick D. Connor shall faithfully perform his duties as such Receiver as required by law and account for to said Court and pay over all moneys and property which may come into his hands as such Receiver by virtue of said order, then the above obligation shall be void, otherwise to be in full force and effect in law.

FREDERICK D. CONNOR.

FIDELITY & DEPOSIT CO. OF MARYLAND,

[SEAL.] By Willis Mullen,

Gen'l Agt. & Atty. in Fact.

LOUIS HARTMAN.

Approved by me this 13th day of February, 1903.

ALBERT B. ANDERSON,

Judge of the U. S. District Court.

Approved by me this 12th day of February, 1903.

NOBLE C. BUTLER,

Clerk of the U. S. District Court at New Albany.

By George B. Cardwill, *Deputy.*

Approved by me this 11th day of February, 1903.

ALBERT B. ANDERSON,

District Judge.

Approved by me this day of February, 1903.

. . . . . .

U. S. Clerk.

And afterwards, to-wit: on the 16th day of February, 1903, Frederick D. Connor, receiver of said M. Zier & Company, filed his petition herein, in the words following, to-wit:

TO THE HONORABLE A. B. ANDERSON,

Judge of said Court:

Frederick D. Connor, heretofore appointed receiver of the property of said M. Zier & Company, respectfully shows to the Court: That the New Albany Trust Company, heretofore appointed and now acting as Receiver of said M. Zier & Company under appointment of the Floyd Circuit Court, of Floyd County, Indiana, has done such acts and so conducted itself as to give reasonable cause for the petitioner to believe that it will resist the order of the Court made herein, for the petitioner as Receiver of this Court to take charge and control of the property of said M. Zier & Company, and that it will disobey the order of the Court heretofore made herein, requiring it to deliver to the petitioner the property and effects of said M. Zier & Company.

The petitioner further represents that he has reason to believe that the Floyd Circuit Court of Floyd County, Indiana, and the Judge thereof will refuse to allow its

Receiver to obey the order of the Court made herein to take possession and control of the property and effects of said M. Zier & Company, and that be certain contempt proceedings will punish the petitioner in bankruptcy for taking any steps to have the said M. Zier & Company declared a bankrupt and for in any way interfering with the possession of said The New Albany Trust Company as Receiver of said property.

Petitioner further says that on the 14th day of February, 1903, said The New Albany Trust Company by W. W. Watts and J. R. Watts, their attorneys, and by Fred. Sauer, the Secretary, appeared in open court before the Hon. W. C. Utz, Judge of said Floyd Circuit Court, and filed its petition and report, a certified copy of which is filed herwith marked "Exhibit A" and made a part hereof; That thereupon after argument by said W. W. Watts the said Judge of said Court made and entered in said cause an order restraining and prohibiting the petitioners in bankruptcy herein from prosecuting the said cause in bankruptcy and from in any way molesting or interfering with the possesion of the said New Albany Trust Company as Receiver of said property of said M. Zier & Company, a copy of which order is filed herewith marked exhibit "B" and made a part hereof.

Wherefore your petitioner asks that he may be directed by an order of this Court what to do in the premises and what steps he shall take in order to obtain the possession of said property and for all necessary orders to govern his actions as such Receiver herein.

FREDERICK D. CONNOR,

Subscribed to and sworn to before me this 14th day of February, 1903.

WALTER G. HARRISON,
Notary Public.

[SEAL.]

Com. expires Oct. 22 1905.

And afterwards, to-wit: On the 9th day of March, 1903, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled matter were had to-wit:

The petition of Inland Steel Company, a corporation, John C. Thurston and John Dey, doing business as Dey Time Register Company, that M. Zier and Company be adjudged a bankrupt within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered the said M. Zier & Company is hereby declared and adjudged bankrupt accordingly.

And at the same time, to-wit: On the 9th day of March, 1903, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above-entitled matter were had to-wit:

Whereas M. Zier and Company, a corporation of New Albany, in the County of Floyd and District aforesaid, on the 9th day of March, A. D. 1903, was duly adjudged a bankrupt upon a petition filed in this Court against him on the 6th day of February, A. D. 1903, according to the provisions of the Acts of Congress relating to bankruptcy.

It is therefore ordered that said matter be referred to Lawrence B. Huckeby, one of the referees in banbruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that said M. Zier and Company shall attend before said referee on the 1st day of April, A. D. 1903, at New Albany, and thenceforth shall submit to such orders as may be made by said referee or by this Court relating to said involuntary bankruptcy.

Pleas of the District Court of the United States for the District of Indiana, begun and holden at the United States Court House in the city of Indianapolis in said District, on the first Tuesday in November in the year of our Lord one thousand nine hundered and two, before Honorable Albert B. Anderson, Judge of said District Court.

United States
vs.
William W. Watts
and D. A. Sachs.
} No. 6377, Contempt.

Be it remembered that heretofore, to-wit, at the November term of said court on the 25th day of February, 1903, before Honorable Albert B. Anderson, Judge of said court, the following proceedings in the above-entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney, and files an Information in the above entitled cause in the words following to-wit:

UNITED STATES OF AMERICA,
District of Indiana.
} *ss.*

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF INDIANA.

November Term A. D. 1902, at Indianapolis.

Now comes Joseph B. Kealing, Attorney of the United States in and for the District of Indiana, who prosecutes for the said United States in this behalf in his own proper person and in the name and on behalf of the said United States, alleges, informs and declares as follows, to-wit: that in a certain proceeding in bankruptcy in the said District of Indiana, to-wit, in the matter of M. Zier & Co., bankrupts, case No. 37 in the said court pending at New Albany, Indiana, certain orders and decrees had been made by the said Uuited States District Court, the Hon. Albert B. Anderson presiding Judge, whereby Frederick D. Connor was appointed receiver

to take charge of the property, goods, wares and merchandise of the said M. Zier & Co., bankrupts aforesaid, that he had qualified as such receiver and had lawfully taken possession of the said property aforesaid then and there situated at New Albany, under and by virtue of the said order made by the court aforesaid, all of which more fully appears in the affidavit herewith and upon which this information is based. That on the 20th day of February, A. D, 1903, that Raymond J. Morris, Claude Sittason, Thomas Smithwick, Charles D. Kelso, William W. Watts and D. A. Sachs, whose given name is unknown to the affiant who made said affidavit, and to the Attorney for the United States herein, did then and there wrongfully, unlawfully, knowingly and forcibly take from the said Frederick D. Connor, receiver as aforesaid, the property, goods and chattels of M. Zier & Co., and then and there withhold wrongfully, knowingly and unlawfully the possession and custody of said property from the said Frederick D. Connor, receiver as aforesaid, well knowing at the time that he was lawfully appointed receiver of the said United States District Court aforesaid, and then and there knowingly, wrongfully, unlawfully and wilfully disregard and disobey the orders and decrees of the said court, all of which more fully appears in the accompanying affidavit, which is made a part hereof, whereby they are each guilty of contempt of this court, contrary to the form of the statutes and against the peace and dignity of the United States.

JOSEPH B. KEALING,
United States Attorney.

UNITED STATES OF AMERICA,
District Court of Indiana.

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF INDIANA.

BEFORE THE HONORABLE ALBERT B. ANDERSON, *Judge:*

In the matter of M. Zier & Company, against whom an action in Bankruptcy has been filed.

Comes now Clarles D. Kelso, the Receiver of M. Zier & Company under the appointment of the Honorable William C. Utz, Judge of the Floyd Circuit Court of Indiana, and Charles D. Kelso, individually, and for answer to the respective rules against him in the said above and foregoing entitled cause of action to show cause why he should not redeliver the property of the said M. Zier & Company into the possession and custody of Frederick D. Connor as Receiver of the said District Court of Indiana, sitting in Bankruptcy, and also to show cause why he should not be punished for contempt for the violation of the orders of said Court heretofore made in said above-entitled cause of action, says:

That on the 30th day of December, 1902, Joseph T. Ryerson & Son, as plaintiffs, commenced an action in the Floyd Circuit Court of Indiana against M. Zier & Company on several certain notes, then and there due, and demanded judgment against the defendant in the sum of fifteen thousand dollars ($15,000); that in said complaint it was shown that the said M. Zier & Company was indebted in the sum of sixty-five thousand dollars ($65,000) and was unable to meet its obligations and that the creditors of the said M. Zier & Company threatening to enter suits against it;

that said defendant was then and there without means and money with which to continue the operation of its business, that by said complaint the said plaintiff prayed for the appointment of a Receiver, that on said 30th day of December, 1902, the said complaint was by the said plaintiff in said cause carried to the Hon. William C. Utz, Judge of said Floyd Circuit Court, and the Hon. William C. Utz, as such Judge of said Court, was then and there requested and moved by the said plaintiff to appoint a Receiver for the said defendant, M. Zier & Company; that the said M. Zier & Company agreed to said application for the appointment of a Receiver and consented that said Judge of said Court might appoint a receiver therefor; that upon said day and upon consideration the said Judge of said Court entered a Vacation Order in said cause granting the application of said plaintiff in said cause for the appointment of a Receiver, and thereupon appointed the New Albany Trust Company as Receiver of the said M. Zier & Company, a certified copy of which order, marked "Exhibit A," is filed herewith attached hereto and by this reference thereto made a part of this Respondent's answer herein.

That the said New Albany Trust Company immediately on said day duly qualified as said Receiver and then and there took upon itself the duty of said Receivership, a certified copy of which acceptance and qualification of said Receiver, marked "Exhibit B," is filed herewith, attached hereto and by this reference thereto made a part of this respondent's answer herein.

That the said Floyd Circuit Court of Indiana and the Judge thereof in vacation were by the statutes of the State of Indiana delegated full and plenty power to appoint Receivers; that said Floyd Circuit Court and the Judge thereof are respectively the Constitutional Court and the Consti-

tutional Officer and made so by the Constitution of the State of Indiana.

That immediately thereafter the said New Albany Trust Company gave notice of its appointment as such Receiver in a newspaper printed and published in the City of New Albany, Floyd County, Indiana; that said Receiver made out an Inventory of the property of said M. Zier & Company which it had taken possession of upon its appointment as such on the said 30th day of December, 1902, and caused the same to be appraised, which inventory and appraisement was filed in the said Floyd Circuit Court, and that said Inventory showed that the appraised value of said property was about twenty-eight thousand and five hundred dollars ($28,500).

That on the 16th day of January, 1903, the said Receiver filed in the Floyd Circuit Court its report and petition wherein it sought the advice and instruction of said Court with respect to the continuance of the operation of said plant and prayed the court that a time be fixed for the hearing of said report and petition, and further praying that the said M. Zier & Company and its officers and the creditors of the said M. Zier & Company be notified by mail and by application of the time and place of the hearing of this report and petition, and requesting said creditors to appear and make known their recommendations or objections to the continuance of the operation of the plant of M. Zier & Company; that said petition further prayed that all cred-creditors of M. Zier & Company be required to prove their claims against this estate by filing proof thereof with this Receiver or by intervening petition in this cause, and that all creditors and persons be restrained and enjoined from prosecuting suits involving this estate in any manner except by intervening petition in this action. And thereupon and

upon consideration of this petition, the said Floyd Circuit Court made a certain order, a certified copy of which, certified under the Act of Congress, marked "Exhibit C," is filed herewith and by this reference thereto made a part of this answer of the respondent herein.

That on the 24th day of January, 1903, the time fixed for the hearing of the above-mentioned reports and the several matters involved therein, it was made to appear to said Court by the said Receiver that all the creditors of the said M. Zier & Company, as shown by the books of the said M. Zier & Company, had been notified by said Receiver to be present on said 24th day of January, 1903, and heard on said matters, and the following-named creditors being present in person or by attorney, to-wit:

"(See Exhibit C.)"

a copy of which last-mentioned order is now filed with this response and made a part hereof by reference thereto and marked "Exhibit D," and that by said last-mentioned order all creditors and other persons were enjoined and restrained from prosecuting the claims or suits against this estate except by intervention in this cause or by first obtain-leave of the said Floyd Circuit Court.

That the said Receiver of the said M. Zier & Company by the authority of the Floyd Circuit Court continued the operation of said plant of M. Zier & Company until the 14th day of February 1903, when at that time it filed in Floyd Circuit Court its petition wherein it showed to the Court that the Inland Steel Company, John C. Thurston and the Dey Time Register Company, as creditors of said M. Zier & Company, had filed a petition in the United States District Court of the District of Indiana, sitting in Bankruptcy, praying for an order of Involuntary Bankruptcy and that said Floyd Circuit Court, then and there, on said 14th day

of February, 1903, authorized said Receiver to proceed to Indianapolis, Indiana, and there by limited appearance and by protestation against appearance only, by petition upon such appearance upon appearance only, lay before the said District Court of the United States for the District of Indiana the facts with regard to the matters herein, which order of said Court is filed herewith, marked "Exhibit E," and by reference thereto made a part of this respondent's answer herein.

That afterwards and on the same day, to-wit, the 14th day of February, 1903, in said cause of action, John T. Ryerson & Son versus M. Zier & Company, then and there depending in the Floyd Circuit Court of Indiana, Frederick D. Connor, as Receiver, by George H. Hester, his attorney, and by leave and order of the said Floyd Circuit Court and upon his own motion, made himself a party to the said proceeding in the matter of the receivership of said M. Zier & Company, then and there depending in said Floyd Circuit Court, and thereupon and said 14th day of February, 1903, filed in the said Floyd Circuit Court, by leave of said Court, his verified petition showing his appointment as Receiver of M. Zier & Company by order of the United States District Court for the District of Indiana and praying the said Floyd Circuit Court for an order requiring the said New Albany Trust Company as Receiver of said M. Zier & Company, to turn over and surrender to him, the said Frederick D. Connor as Receiver in Bankruptcy, the property of said M. Zier & Company, to which the New Albany Trust Company, Receiver of said M. Zier & Company, under the orders of the Floyd Circuit Court had custody; and that the matter of said petition was continued in the said Floyd Circuit Court until the next term thereof, a certified copy of which proceedings by the said Frederick D. Connor in said Floyd Circuit Court

and the order showing his intervention in said cause, is filed herewith, marked "Exhibit F," and by this reference thereto is made a part of this respondent's answer herein.

That afterwards, to-wit, on the 19th day of February, 1903, before the Honorable William C. Utz, sole judge of said Court in vacation, W. W. Watts, as attorney for the New Albany Trust Company as Receiver for M. Zier & Company, appeared and filed before said Judge of said Court a written statement, which the Judge of said Court, after considering the same, refused to concur therein and found that the matters and facts therein stated showed that said W. W. Watts had been guilty of contempt of court and the said Judge ordered that a rule be issued against the said W. W. Watts to appear before him on the 21st day of February at 3 o'clock P. M. and show cause, if any he has, why he should not be punished for contempt; that said respondent now files with his answer herein a certified copy of the said statement of said Attorney W. W. Watts, filed and set out, together with a certified copy of the action of the said Judge thereon, which certified copy is attached hereto and marked "Exhibit G," and by this reference thereto is made a part of this respondent's answer herein.

That on the said 19th day of February, before the Hon. William C. Utz, Judge of said Floyd Circuit Court, in vacation, the New Albany Trust Company as Receiver for said M. Zier & Company tendered to the Judge of said Floyd Circuit Court its written resignation as said Receiver, and the Judge, after reading said tender of resignation, held that the matters therein set forth showed that said Receiver was in contempt of Court and then and there ordered that a rule issue at once against said Receiver to appear before the said Judge of said Court on the 21st day of February at 3 o'clock P. M. and show cause, if any he had or can, why

it should not be punished for contempt of Court, a certified copy of which written tender of resignation, together with the action of the Judge of said Court, thereon is attached hereto and marked "Exhibit H," and by this reference thereto is made a part of this respondent's answer herein.

That afterwards, to-wit, on the 20th day of February, 1903, the United States Tube Company, D. A. Sachs, its attorney, filed before the judge of said Court, its verified statement, wherein it prayed said Judge to remove said New Albany Trust Company from its trust as Receiver of M. Zier & Company; that said New Albany Trust Company appeared to said petition and avowed before the said Judge of said Court that it had surrendered the possession of the said property of said M. Zier & Company to Frederick D. Connor without the leave of said Court; that thereupon said Judge of said Court refused to accept the resignation of the said New Albany Trust Company as said Receiver, and then and there entered an order removing said Trust Company as said Receiver and in its place and stead appointed the respondent, Charles D. Kelso, as its successor, in the matter of the receivership of said M. Zier & Company; that this respondent immediately qualified as said Receiver and gave bond in the sum of thirty thousand dollars ($30,000) to the approval of the Judge of said Floyd Circuit Court; that this respondent was then and there ordered by the Judge of the said Floyd Circuit Court to demand of the said New Albany Trust Company and of the said Frederick D. Connor the immediate possession of the property of the said M. Zier & Company,which came into the hands of the said New Albany Trust Company as a Receiver herein, and that if the said New Albany Trust Company or the said Frederiek D. Connor shall fail and refuse to immediately turn over and surrender the possession of said assets to said Receiver, the

Judge of said Court ordered this Receiver to immediately report such refusal and failure to surrender said assets to said Judge for further action in the premises, all of which more fully appears from the certified copy of said petition of the United States Tube Company and the action of said Judge thereon, which is attached hereto and marked "Exhibit I," and by this reference thereto made a part of this respondent's answer herein.

That afterwards on the said 20th day of February, 1903, in obedience to the order of said Court, this respondent as Receiver of M. Zier & Company called upon the New Albany Trust Company and demanded that possession of all the assets of M. Zier & Company which came into its hands as Receiver thereof be surrendered to him, and that said Trust Company failed and refused to surrender the possession of the same for the reason that it claimed that it had turned over the Plant of the M. Zier & Company to said Frederick D. Connor; that for the other assets of said M. Zier & Company it intended to account forthwith to the said Judge of the said Floyd Circuit Court; that thereupon this Respondent as Receiver of M. Zier & Company, in further obedience to the order of said Judge, called upon the said Frederick D. Connor at his home in the City of New Albany, Indiana, and demanded of him the possession of all the property of said M. Zier & Company which had been turned over to him by the said New Albany Trust Company; that said Frederick D. Connor failed and refused to turn the same over to this Respondent. This Respondent says that he reported said facts last above recited to the Floyd Circuit Court on the said 20th day of February, 1903, and upon making said report the said Judge of said Court, upon consideration of said report, found that said Frederick D. Connor had been intermeddling with the assets of said estate, and it was there-

upon considered ordered and adjudged by the said Judge of said Court that a summary writ be issued, directed to the Sheriff of Floyd County, Indiana, requiring the said Sheriff to immediately seize and take into his possession and deliver over to the said Charles D. Kelso, Receiver of M. Zier & Company, all the property of the said M. Zier & Company which Fredrick D. Connor now has in his possession, which consists of the plant of M. Zier & Company, located at the corner of Pearl and Oak Streets, in the City of New Albany, including all tools, machinery, manufactured iron, scrap iron, appliances and other personal property therein situated, books, papers, accounts and choses in action, and that said Sheriff was by said order required to execute said writ forthwith, and upon the execution of said writ to make his return to the Judge of said Floyd Circuit Court, all of which last-mentioned proceedings appear more fully from the certified copy thereof, attached hereto and marked "Exhibit J," filed herewith and by this reference thereto made a part of this respondent's answer herein.

That this Receiver is informed and so states the fact to be that a writ was issued by the said Floyd Court of Indiana in compliance with the aforesaid order of the Judge of said Court and delivery to the Sheriff of Floyd County, Indiana, for execution: That said writ was delivered to said Sheriff on the 20th day of February, 1903, and was on the same day executed by him by seizing and taking from Frederick D. Connor the property described in said writ: that after the said Sheriff had taken said property from the said Frederick D. Connor, the said Sheriff, in obedience to the commands of said writ, delivered the same to this respondent, as receiver, under the appointment of said Judge as aforesaid, and not otherwise.

This respondent says that he did not take said property from said Connor, whether as receiver or otherwise, by force

or otherwise, but that his sole connection with said property was, as aforesaid, in receiving the same from the Sheriff of Floyd County, Indiana, under and in pursuance and in obedience to the orders of said Judge of said Floyd Circuit Court, and that his holding of said property is solely as receiver under said appointment and pursuant to and in obedience to the orders of the Judge as aforesaid and in no other capacity or manner whatever.

Respondent shows that at and prior to the time of his appointment as receiver, and at and prior to the doing of facts herein averred, this respondent was an officer of the Floyd Circuit Court, to-wit: an attorney at law, admitted to practice therein, and, as such subject to the orders of said court in all lawful matters that might be ordered by said court; that while he has been engaged in the practice of his profession in this honorable court, and, as such, an officer thereof, he has had scant experience in the bankruptcy practice, and prior to his appointment as receiver had no occasion to inform himself of the price lines of demarkation between the jurisdiction of the courts of the state of this court.

Respondent further says that in the city of New Albany and in the city of Louisville, and in the vicinity thereof, one D. A. Sachs, a member of the bar of the Louisville Courts and of the United States District,Circuit and Supreme Courts, has enjoyed for a long time the reputation of a competent, skilled and reputable lawyer, and especially familiar with the proceedings in bankruptcy matters, which reputation was known to this respondent, and as this respondent is informed and believes, was known to the Hon. William C. Utz, Judge as aforesaid, and that by the direction of said Judge this respondent, upon his appointment and qualification as receiver, employed said Sachs as his counsel in said

matters, and was in all respects guided by his opinion and advice, save in so far as he had explicit orders and directions from the Judge.

Respondent further says that all of his acts and doings in the premises were done not individually but as a receiver of said M. Zier & Co., as an officer of the Floyd Circuit Court, under the direction and in obedience to the orders of the Judge of said Court as aforesaid, and that as an individual and separate and distinct from his position as receiver, he has had and has now no connection whatever with said plant and has done nothing in the premises.

This respondent further says that long prior to the appointment of this respondent as receiver and the acts subsequent thereto, the Floyd Circuit Court, by its receiver, was in the actual, peacable and undisputed control and possession of the above and foregoing property and that the jurisdiction of the Floyd Circuit Court had attached over the person of said M. Zier and the subject-matter of said action by the voluntary appearance of said M. Zier & Co. to the complaint filed as herein shown by Joseph T. Ryerson & Son long prior to the time when the proceedings in involuntary bankruptcy above referred to were commenced in this honorable Court, and long prior to the passage of the amendment to the bankruptcy law approved on the 5th day of February, 1903.

He respectfully submits that at the time of the criminal appointment of a receiver for said M. Zier & Co. by the Judge of the Floyd Circuit Court, said Judge could not without a violation of his oath of office and his duties as such Judge, have refused to appoint such receiver, and through said receiver to take possession of said property, and that by reason thereof the said possession so taken of said property and plant of said M. Zier & Co. by said Court, through its

receiver, was not wrongful or illegal, but was legal and rightful, and that if it ever thereafter became wrongful or illegal, it became so solely by reason of the fact, as your respondent is informed by cousel in whose judgment and opinion he relies, because of the amendment to said Bankruptcy Act enacted and approved on the 5th day of February, 1903, and that by reason of the fact that said amendment to said Act was not and is not retrospective by said of said property, through its receiver, continued to be rightful and in accordance with the statutes of the United States in such a case made and provided.

This respondent further shows that upon the delivery to him by the Sheriff of the possession of said property, he employed one Thomas Smithwick as custodian thereof and placed him in charge of said property as such custodian, to the end that it might be cared for and preserved, and he submits to the court that the appointment by him of said Smithwick as custodian was not wrongful nor illegal unless the orders of said Judge of the Floyd Circuit Court, as aforesaid, were without jurisdiction and consequently void. And he asks that his return to said rule be taken and held by the court as the return not only for himself as receiver and as an individual, but for and on behalf of said Smithwick.

This respondent further submits to the court that if the possession of said property by said Floyd Circuit Court through its receiver, was valid and binding and if said Circuit Court had jurisdiction over the person of said defendants and of the subject-matter of said action, and consequently of said property, as this respondent is advised and believed by counsel that it had, its receiver so originally appointed, to-wit: the New Albany Trust Co., had no right, warrant or authority whatever, without the approval of

said Floyd Circuit Court, or the Judge thereof in vacation, to abandon or surrender the possession of said property or any portion thereof, to any other person without the consent, approval and order of the Floyd Circuit Court or the Judge thereof, in vacation, and this respondent avers that the surrender to said Connor, whether as receiver of this Honorable Court or otherwise, by said New Albany Trust Company, was not authorized by said Floyd Circuit Court and was without authority of law, unless said Floyd Circuit Court had originally no jurisdiction of the subject-matter of said action or had lost jurisdiction thereof by reason of the amendment to the Bankruptcy Act approved February 5th, 1903, or by reason of the pendency of the proceedings in bankruptcy herein.

This respondent further says that he has never at any time intended to violate any of the orders of this court, or in any wise interfere with its jurisdiction or the possession of said property by this Court, through its receiver or otherwise, but has only intended and endeavored to obey the orders of the Floyd Circuit Court and of the Judge thereof in the premises in matters in which he was at the time advised by his counsel he was compellable to obey such orders.

If upon the foregoing facts it shall appear to this court that he has in anywise or manner interfered with its jurisdiction, he submits that he does so upon the advice of counsel selected for him by the Judge by whom he was appointed, and upon whose advice and opinion he relied, and not with any intention or purpose whatever of interfering with the lawful orders of this court or its process, or of showing any disrespect to this court, the Judge thereof, its jurisdiction or orders, and if upon the foregoing facts this court shall be of the opinion that the Circuit Court, either originally had no jurisdiction of the subject-matter of said action or there-

after lost jurisdiction thereof by reason either of the amendment to said Bankruptcy Act of the 5th of February, 1903, or by reason of any of the orders that have been made by this court, and that because thereof this respondent ought to be directed as such receiver or otherwise, to surrender the possession of said property to said Connor as receiver of this court, or to this court, he respectfully submits that an order in that behalf ought to be made by this court, to the end that he might file and plead the same in said Floyd Circuit Court and to the Judge thereof as a justification for his conduct and doings in the premises, to the end that he may not be or appear to be in contempt or the orders of said Floyd Circuit Court or the judge thereof, and to the end that there should be no apparent controversy between this Honorable Court and said Floyd Circuit Court over said property or any matters whatever connected therewith, and that upon the entering of such order he may be discharged hence, or that the Court may make such other and further orders in the premises as may to the court appear just and proper and equitable in the premises.

WILLIAM A. KETCHAM,
Solr. for Respondents.

Thomas Smithwick respectfully shows to the Court that so far as he has any knowledge, information or belief upon the subject, his connection with the matters herein are set forth in the above and foregoing return, and he asks that the same be accepted as his return, to the proceedings herein. THOS. SMITHWICK.

Personally appeared before me, a Notary Public, the above-named Thomas Smithwick, and acknowledged the foregoing facts to be true as he verily believes.

ARTHUR F. SHAFER,
[SEAL.] *Notary Public.*

My commission expires Dec. 20, 1904.

Charles D. Kelso respectfully shows to the Court that so far as he has any knowledge, information or belief upon the subject, his connection with the matters herein are as set in the above and foregoing return, and he asks that the same may be accepted as his return to the proceedings herein.

CHARLES D. KELSO.

Personally appeared before me, a Notary Public, the above-named Charles D. Kelso and acknowledged the foregoing facts to be true as he verily believes.

ARTHUR F. SHAFER,
Notary Public.

[SEAL.]

My commission expires Dec. 20, 1904.

UNITED STATES OF AMERICA, } ss.
District of Indiana. }

IN THE DISTRICT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF INDIANA.

BEFORE THE HONORABLE ALBERT B. ANDERSON, *Judge:*

In the matter of M. Zier & Company, against whom a petition for adjudication in Bankruptcy has been filed. } In Bankruptcy.

Come now Claude Sittason, deputy sheriff of Floyd County, Indiana, and Claude Sittason, individually, and for answer and response to the rule issued herein do show cause why he should not redeliver the property of M. Zier

& Company to Frederick D. Connor, receiver of this Court, and also for answer and response to the rule to show cause why he should not be attached in contempt of this Honorable Court, most respectfully says:

That on the first day of January, 1903, he was duly appointed by Raymond J. Morris, the then acting and legally qualified sheriff of Floyd County, as his deputy sheriff; that he immediately qualified as such deputy sheriff and since then he has been acting as such deputy sheriff. He further says that on the 20th day of February, 1903, there was issued out of the Floyd Circuit Court, under the hand of the Clerk and seal of said Court, directed to the sheriff of Floyd County, Indiana, a writ in the words and figures following, to-wit:

STATE OF INDIANA.

To the Sheriff of Floyd County:

Greeting.

By order of the Honorable William C. Utz, Judge of the Floyd Circuit Court, which order was made in vacation, you are hereby commanded and required to forthwith take from Frederick D. Connor the possession of the boiler plant of M. Zier & Co., situated on the northeast corner of Pearl and Oak Streets in the City of New Albany, Indiana, together with all the tools, machinery, appliances, books, papers, accounts, choses in action, and all other personal property belonging to said M. Zier & Company and found in the premises of said M. Zier & Company at said point in the city of New Albany, Indiana, being the same property wrongfully and without leave of this Court surrendered to Frederick D. Connor by the New Albany Trust Company, formerly receiver of M. Zier & Company, and you are further required

by the order of said Judge of said Court to forthwith deliver said above-described property to Charles D. Kelso receiver of said M. Zier & Company, and of this writ make due service and immediate return thereof.

Witness, Charles B. Scott, Clerk of the Floyd Circuit Court, and the seal hereto affixed at the Court House in the City of New Albany, this 20th day of February, 1903.

CHARLES B. SCOTT,
Clerk of the Floyd Circuit Court.
By William F. Ruoff,
Deputy.

[SEAL.]

That said writ immediately came to the hands of Raymond J. Morris, sheriff of Floyd County, Indiana; and that when said writ so came to the hands of said Raymond J. Morris, as such sheriff of Floyd County, said Morris, as such sheriff, notified this respondent as his deputy to go with him as a witness while he executed said writ. That he thereupon accompanied said Raymond J. Morris, as such sheriff of Floyd County, to the residence of Frederick D. Connor while said Morris as such sheriff served said writ by reading the same and by delivering a certified copy thereof to said Frederick D. Connor. That thereupon said Raymond J. Morris went to the plant of M. Zier & Company at Pearl and Oak Streets in the City of New Albany and County of Floyd; and upon the order and request of said Sheriff this respondent went with him. That said property at the time was in the possession of and control of one Charles Davis, and said sheriff thereupon told said Davis of his official authority who thereupon turned said property over to said Morris. That under the order and direction of said Morris, this respondent, as his deputy, remained in possession of said property for about ten minutes while said Morris as such sheriff went to

the Judge's room of the Floyd Circuit Court and reported the fact that he had so taken possession of said property; that at the end of about ten minutes said Morris returned and delivered the possession of said property into the hands of Charles D. Kelso, who claimed to have been appointed receiver of said property by the Floyd Circuit Court, and to whom said Morris by said writ and by the Judge of said Court was ordered and directed to deliver said property.

This respondent further says that he had nothing to do with the procuring of said order or with the issuing of said writ. That this respondent was subject to the orders of said Raymond J. Morris as sheriff of Floyd County, Indiana, and that he ignorantly and innocently believed that it was his right and duty to assist said Morris in the execution of said writ in the manner set out as aforesaid. That he acted in the utmost good faith, believing that it was his sworn duty as such deputy sheriff to do what he did do under said writ; that he believed that if he failed to do it, he would be subject to fine and punishment by the Floyd Circuit Court and to removal from his office. That this respondent believed that said order was valid on its face, and that all of his acts and doings thereunder were ignorantly and innocently done and performed without any intention of committing a contempt against the dignity, authority, judgments and processes of this Honorable Court, and wholly in the belief that it was the duty of the respondent to do and perform said acts.

Said respondent further says that he does not attempt to justify the acts of the Floyd Circuit Court in the premises; that he was not a party to the same; and that he had nothing to with the procuring of said proceedings or the issuing of said writ; that he neither advised nor counseled the same; that he regrets exceedingly the complications that

have arisen in this matter, and he regrets exceedingly the acts that he has done under said writ. He says that he stands ready and willing to do all that is within his power to remedy and rectify the acts and proceedings done by him under said writ.

Said respondent further says that for himself as an individual he has done and performed none of the acts complained of and that the same were all done and performed by him as the deputy sheriff of Floyd County, Indiana, under and by virtue of said writ and order so issued out of the Floyd Circuit Court, and under and by virtue of the orders of his superior, Raymond J. Morris, sheriff of Floyd County, Indiana.

Wherefore, said Claude Sittason, as sheriff of Floyd County, Indiana, and said Claude Sittason, as an individual, asks to be dismissed from the rules issued therein.

EVAN B. STOTSENBURG,
JOHN H. WEATHERS,
Attorneys for respondent.

UNITED STATES OF AMERICA,

STATE OF INDIANA.

Claude Sittason being duly sworn, upon his oath says that he is the respondent in the above-entitled matter and that the facts set out in said response are true as he is informed and verily believes.

CLAUDE A. SITTASON.

Subscribed and sworn to before me this 25th day of February, 1903.

NOBLE C. BUTLER,
Clerk.

UNITED STATES OF AMERICA,

UNITED STATES OF AMERICA, }
} *ss.*
District of Indiana. }

IN THE DISTRICT COURT OF THE UNITED STATES,

For the District of Indiana.

BEFORE THE HONORABLE ALBERT B. ANDERSON, *Judge.*

In the matter of M. Zier & Company, against whom a petition for adjudication in Bankruptcy has been filed. } In Bankruptcy.

Come now Raymond J. Morris, Sheriff of Floyd County, Indiana, and Raymond J. Morris, individually, and for answer and response to the rule issued herein to show cause why he should not redeliver the property of M. Zier & Company to Frederick D. Connor, Receiver of this court, and also for answer to the rule to show cause why he should not be attached for contempt of this honorable Court, most respectfully says:

That he was elected sheriff of Floyd County, Indiana, at the general election held in November, 1902, and that he took his office on the first day of January ,1903; and since that time he has been the duly elected, qualified and acting sheriff of said county of Floyd and State of Indiana. He further says that by the provisions of Sections of 5868 of the Revised Statutes of 1881 of said State of Indiana, the duties of this respondent as sheriff are defined and fixed as follows, to-wit:

"§5868. Duties.—Such Sheriff shall be a conservator of the pease within his county; shall arrest, without process, all persons who, within his view, shall commit any crime or misdemeanor, take them before the nearest Justice of the Peace of the county, and detain them in custody until the cause of such arrest has been investigated; suppress all breaches of the peace within his knowledge, having hereby given him authority to call to his aid the power of the county; pursue and commit to the jail of the county all felons; execute all process directed to him by legal authority, either in person or by deputy; attend upon and preserve order in all Courts of record in his county, except Justice's Courts; take care of the jail and the prisoners therein; and serve all process directed to him from the Circuit Court or from the Board of Commissioners, according to law."

That according to the provisions of said statute this respondent innocently and ignorantly believed that it was his duty to serve any and all order issued out of the Floyd Circuit Court, of which Court he was and is the sheriff, without regard to the legality of said writs or of the apparent fairness thereof. That on the 20th day of February, 1903, this respondent was absent on official duty in the County of Harrison and State of Indiana, until about six o'clock P. M. of said day; that upon his arrival home and at his office, he was informed by his deputy to be before the Judge of the Floyd Circuit Court sitting in chambers at seven o'clock P. M. of said day; that he reported to said Judge as required by said notice, and thereupon the Clerk of the Floyd Circuit Court delivered to him, under his hand and seal of office, the following writ from the Hon. William C. Utz, who was the sole and presiding Judge of the Floyd Circuit Court, to-wit:

"STATE OF INDIANA.

TO THE SHERIFF OF FLOYD COUNTY:

Greeting.

By order of the Honorable William C. Utz, Judge of the Floyd Circuit Court, which order was made in vacation, you are hereby commanded and required to forthwith take from Frederick D. Connor the possession of the boiler plant of M. Zier & Co., situated on the northeast corner of Pearl and Oak Streets, in the City of New Albany, Indiana, together with all the tools, machinery, appliances, books, papers, accounts, choses in action and all other personal property belonging to said M. Zier & Company and found in the premises of said M. Zier & Co. at said point in the city of New Albany, Indiana, being the same property wrongfully and without leave of this court surrendered to said Frederick D. Connor by the New Albany Trust Company, formerly receiver of M. Zier & Co., and you are further required by the order of said Judge of said Court to forthwith deliver said above-described property to Charles D. Kelso, receiver of said M. Zier & Co., and of this writ make due service and immediate return thereof.

Witness, Charles B. Scott, Clerk of the Floyd Circuit Court, and the seal hereto affixed at the Court House in the City of New Albany, this 20th day of February, 1903.

CHARLES B. SCOTT,

[SEAL.] *Clerk of Floyd Circuit Court.*

By William Ruoff,

Deputy."

That said writ required this respondent, as sheriff of Floyd County, Indiana, to take possession of the boiler plant of M. Zier & Co., together with all the tools, machinery,

appliances, books, papers, accounts, choses in action, and all other personal property belonging to said M. Zier & Company, and deliver the same to Charles D. Kelso, appointed receiver by said Floyd Circuit Court.

This respondent further says that he had nothing to do with the procuring of said order or with the issuing of said writ. That since he has been the sheriff of Floyd County he has been consulting Evan B. Stotsenburg, a regular practicing attorney of the Floyd Circuit Court, as his legal adviser in matters affecting his official conduct; that as soon as he received said writ he telephoned to said Evan B. Stotsenburg to ask his opinion as to what his duties were under said writ; that he ascertained that said Evan B. Stotsenburg was confined to his bed by sickness, and that he was unable to, and did not, and could not procure his advice. That thereupon this respondent, ignorantly and innocently believing that it was his right and duty to execute said writ according to its terms, and acting in good faith and with pure motives, and with no intention of insulting this Court or defying its orders, judgments, and processes, executed said writ by reading the same to and within the presence and hearing of said Frederick D. Connor at his home in the City of New Albany, Indiana, and also by delivering to him a certified copy of said writ. That upon said Connor refusing to deliver possession of said property described in said writ, this respondent thereupon went upon said property and demanded the same from the possession of one Charles Davis, who was in possession thereof, and from whom this respondent learned that he was in possession of the same as agent and representative of said Connor. That upon this respondent notifying said Charles Davis of the fact that he was sheriff of Floyd County, Indiana, and of the fact that he had said writ, said Charles Davis, upon

the demand of this respondent, delivered said property over to this defendant, who thereupon put his deputy, Claude Şittason, in temporary possession thereof. That after this respondent had so put his deputy in possession of said property, he verbally reported to said Honorable William C. Utz, Judge of the Floyd Circuit Court, what he had done: and asked for further instructions in the matter. Thereupon he was informed by the Honorable William C. Utz, as such Judge, that it was his duty to fully execute said writ by turning said property over to Charles D. Kelso, who had been appointed receiver thereof by said Honorable William C. Utz, as such Judge. That thereupon in obedience to said writ and command of said Judge, and ignorantly and innocently believing that it was his duty to do so, he turned over said property to said Charles D. Kelso, as such receiver, who has ever since had possession of said property. That thereupon this respondent, as such sheriff, made the following return to said writ:

"This writ came to hand at eight o'clock P. M. on the 20th day of February, 1903, and I have served the same by reading the within to and in the presence and hearing of Frederick D. Connor, and delivering to him a certified copy of the same; and the said Connor refused to deliver the possession of the property described in the within writ, whereupon I seized and took possession of the within described property and have turned the same over to Charles D. Kelso, receiver of M. Zier & Company.

"Dated this 20th day of February, 1903. Served in Floyd County, Indiana.

RAYMOND J. MORRIS,
Sheriff of Floyd County, Indiana."

That without justifying or attempting to justify the action of the Floyd Circuit Court in the premises, he is informed and believes that said Floyd Circuit Court purported to so act in the premises by the provisions of Section 1226 of the Revised Statutes of Indiana of 1881, which provides:

"§1226. Failure to deposit--Order to Sheriff. Whenever, in the exercise of its authority, a Court, or the Judge thereof in vacation, shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the Court or the Judge, besides punishing the disobedience as for contempt, may make an order requiring the Sheriff to take the money or thing, and deposit it or deliver it in conformity with the direction of the Court or Judge thereof."

But be that as it may this respondent says that in all things done by him in the premises he acted in the utmost good faith, believing that it was his sworn duty as such sheriff to execute said writ so issued out of said Court according to its terms, and that if he failed to do so, he would be subject to fine and punishment by the Court, to removal from his said office, to punishment under the criminal laws of the State of Indiana, and to impeachment. That this respondent believed that said order was valid upon its face, and that all his acts and doings thereunder were ignorantly and innocently done and performed without any intention of committing a contempt against the dignity, authority, judgments and processes of this Honorable Court, and wholly in the belief that it was the duty of this respondent to do and perform said acts. This respondent further says that he does not attempt to justify the acts of the Floyd Circuit Court in the premises, that he was not a party to the same, that he had nothing to do with the procuring of said proceedings, or the issuing of said writ, that he neither

advised nor counseled the same, that he regrets exceedingly the unfortunate complications that have arisen in this manner, and he regrets exceedingly the acts that he has done under said writ. He says that he stands ready and willing to do all that is within his power to remedy and rectify the proceedings and acts done and performed by him under said writ. This respondent further says that since he performed and did the acts above set out under said writ, he has been informed by his counsel that when he ascertained that said property was in the hands of the receiver of this Court, he should have appeared in this Court and presented his writ and the authority under which he was purporting to act, for the consideration of the Court.

This respondent further says for himself as an individual he has done and performed none of the acts complained of, but that the same were all done and performed by him as sheriff of Floyd County, under and by virtue of said writ and order so issued out of the Floyd Circuit Court.

Wherefore, said Raymond J. Morris, as sheriff of Floyd County, Indiana, and said Raymond J. Morris as an individual, ask to be dismissed from the rules issued against him herein.

EVAN B. STOTSENBURG,
JOHN H. WEATHERS,
Attorneys for respondent.

UNITED STATES OF AMERICA, } *ss.*
State of Indiana. }

Raymond J. Morris, being duly sworn upon his oath, says that he is respondent in the above-entitled matter, and that the facts set out in said response are true as he is informed and verily believes; and further says not.

RAYMOND J. MORRIS.

Subscribed and sworn to before me this 25th day of February, 1903.

NOBLE C. BUTLER,
Clerk.

And thereupon replications are filed to the foregoing answers, in the words following, to-wit:

Comes now the petitioner, Frederick D. Connor, Receiver, and files for reply to the answer and showing made by Charles D. Kelso, and in behalf of Thomas Smithwick to the charge of wrongfully keeping the possession of the property of said bankrupts from the possession and control of the receiver, denies each and every material allegation therein contained.

GEO. H. HESTER,
Atty. for Petitioner.

Comes now the petitioner Frederick D. Connor, Receiver, and for reply to the answer and showing made by Raymond J. Morris, the sheriff of Floyd County, Indiana, to the charge against him of wrongfully taking the property of said bankrupt from his possession and control and for contempt of this court, denies each and every material allegation therein contained.

GEO. HESTER,
Atty. for Petitioner.

Comes now the petitioner Frederick D. Connor, Receiver, and for reply to the answer and showing of Claude Sittason, deputy sheriff, in the charge of contempt of this court in taking wrongful possession of the property of said bankrupt, denies each and every material allegation contained in his said answer.

GEO. H. HESTER,
Atty. for Petitioner.

And this cause coming on to be tried, and the court having heard a part of the evidence herein, doth now adjourn until 9 o'clock to-morrow morning.

And afterwards, to-wit, at the November Term of said Court, on the 26th day of February, 1903, before Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above-entitled cause were had, to-wit.

Comes now Joseph B. Kealing, United States Attorney, and the defendants in person and by their attorneys also come, and the court having further heard the evidence herein doth now adjourn until 9 o'clock to-morrow morning.

And afterwards, to-wit, at the November Term of said Court, on the 27th day of February, 1903, before Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above-entitled cause were had, to-wit:

Comes now Joseph B. Kealing, United States Attorney, and at the same time also comes said defendant Charles D. Kelso in person, and by counsel, and this cause coming on to be further heard, is now submitted to the court upon the evidence; and the court being sufficiently advised doth find that said defendant is guilty of the contempt charged.

It is therefore considered by the Court that said defendant, Charles D. Kelso, for the offense charged be imprisoned and confined in the jail of Marion County, Indiana, for the term of sixty days, and that he do pay unto the United State, the cost of this proceeding, taxed at $...., and that he do stand committed until said costs are paid.

Comes now Joseph B. Kealing, United States Attorney, and at the same time also comes Raymond J. Morris, in person and by counsel, and this cause coming on to be further heard, is now submitted to the court upon the evidence; and the court being sufficiently advised doth find that said defendant is guilty of the contempt charged.

It is therefore considered by the court that said defendant, Raymond J. Morris, for the offense charged be imprisoned

and confined in the jail of Marion County, Indiana, for the term of twenty days, and that he do pay unto the United States the cost of this proceeding, taxed at $. . . ., and that he do stand committed until said costs are paid.

Comes now Joseph B. Kealing, United States Attorney, and at the same time also comes Claude Sittason in person and by counsel, and this cause coming on to be further heard, is now submitted to the court upon the evidence; and the court being sufficiently advised doth find that said defendant is guilty of the contempt charged.

It is therefore considered by the court that said defendant, Claude Sittason, for the offense charged be imprisoned and confined in the jail of Marion County, Indiana, for the term of ten days, and that he do pay unto the United States the cost of this proceeding, taxed at $. . . ., and that he do stand committed until said costs are paid.

Comes now Joseph B. Kealing, United States Attorney, and at the same time also comes Thomas Smithwick in person and by counsel, and this cause coming on to be furthur heard, is now submitted to the court upon the evidence; and the court being sufficiently advised doth find that said defendant is guilty of the contempt charged.

It is therefore considered by the court that said defendant, Thomas Smithwick, for the offense charged be imprisoned and confined in the jail of Marion County, Indiana, for the term of ten days, and that he do pay unto the United States the cost of this proceeding, taxed at $. . . ., and that he do stand committed until said costs are paid.

FILE COPY.

No. Orig.

Supreme Court of the United States.

In re DAVID A. SACHS, Petitioner.

Addenda to Exhibit B Filed with Petition.

INDEX.

Indemnity Bond 3
Bond of Receiver. 5
Petition of Receiver for Instructions 6
Adjudication in Bankruptcy 8
Order of Reference 8
Information 9
Answer of Charles D. Kelso and Thomas Smithwick 11
Answer of Claude Sittason 25
Answer of Raymond J. Morris 30
Replies to answers. 37
Judgment against Kelso 38
Judgment against Morris, Sittason and Smithwick 38

Addenda to Exhibit B.

And said petitioner now files its indemnity bond herein in the words following, to-wit:

Know all Men by these Presents: That we, the Inland Steel Co. (a corporation organized under the laws of the State of Indiana) as principal, and The Fidelity and Deposit Company of Maryland and Louis Hartman, as sureties, are held and firmly bound unto M. Zier & Co., in the full and just sum of Twenty thousand dollars ($20,000) to be paid to said M. Zier & Co., or its assigns, to which payment well and truly to be made, we bind ourselves and our assigns jointly and severally by these presents.

Signed and sealed this 10th day of February, 1903.

The condition of this obligation is such that whereas, a petition in bankruptcy has been filed in the District Court of the United States for the District of Indiana against the said M. Zier & Co., and the said Inland Steel Co. has applied to that Court for the appointment of a receiver, with an order directing him to seize and hold the property of said M. Zier & Co. subject to the further orders of said District Court.

Now, therefore, if such Receiver shall be appointed and such order shall be made for the seizure of said property, and if the said Inland Steel Co. shall indemnify the said M. Zier & Company for such damages, as it shall sustain, in the event such seizure shall prove to have been wrongfully obtained,

then the above obligation is to be void—otherwise to remain in full force and virtue in law.

Signed and delivered in the presence of

[SEAL.] .....

.....

[SEAL.] FIDELITY & DEPOSIT CO. OF MD.
Witness: By Willis Mullen, *Gen. Agt. and*
L. C. WALKER. *Atty. in fact.*
[SEAL.] LOUIS HARTMAN.

IN THE U. S. DISTRICT COURT,

FOR THE DISTRICT OF INDIANA.

Inland Steel Company
vs.
M. Zier & Company. } In Bankruptcy.

I, George B. Cardwill, Deputy Clerk of U. S. District Court for the District of Indiana, at New Albany, Indiana, hereby certify that I have approved and I do now approve the Fidelity and Deposit Company of Maryland as surety on the bond of the petitioner in the above cause, which bond is for the sum of twenty thousand dollars ($20,000) and is attached hereto.

GEORGE B. CARDWILL,
Deputy Clerk U. S. District Court for the District of Indiana.

And afterwards, to-wit: on the 13th day of February, 1903, said Receiver filed his bond in the above-entitled matter, in the words following, to-wit:

Know all Men by these Presents: That we, Frederick D. Connor, as principal, and the Fidelity and Deposit Company of Maryland and Louis Hartman, as sureties, are held and firmly bound unto the United States of America in the penal sum of Ten Thousand Dollars ($10,000) for the payment of which we bind ourselves, our heirs, executors and administrators firmly by these presents.

Signed and dated this 12th day of February, A. D. 1903.

The condition of the above obligation is such, that whereas, on the 11th day of February, 1903, the said Frederick D. Connor was duly appointed by the United States District Court for the District of Indiana as Receiver in Bankruptcy, to take charge of the property and effects of M. Zier & Company, the alleged bankrupt therein, until the further order of the Court therein:

Now if said Frederick D. Connor shall faithfully perform his duties as such Receiver as required by law and account for to said Court and pay over all moneys and property which may come into his hands as such Receiver by virtue of said order, then the above obligation shall be void, otherwise to be in full force and effect in law.

FREDERICK D. CONNOR.

FIDELITY & DEPOSIT CO. OF MARYLAND,

[SEAL.] By Willis Mullen,

Gen'l Agt. & Atty. in Fact.

LOUIS HARTMAN.

Approved by me this 13th day of February, 1903.

ALBERT B. ANDERSON,

Judge of the U. S. District Court.

Approved by me this 12th day of February, 1903.

NOBLE C. BUTLER,
Clerk of the U. S. District Court
at New Albany.
By George B. Cardwill, *Deputy.*

Approved by me this 11th day of February, 1903.

ALBERT B. ANDERSON,
District Judge.

Approved by me this day of February, 1903.

. . . . . .
U. S. Clerk.

And afterwards, to-wit: on the 16th day of February, 1903, Frederick D. Connor, receiver of said M. Zier & Company, filed his petition herein, in the words following, to-wit:

TO THE HONORABLE A. B. ANDERSON,
Judge of said Court:

Frederick D. Connor, heretofore appointed receiver of the property of said M. Zier & Company, respectfully shows to the Court: That the New Albany Trust Company, heretofore appointed and now acting as Receiver of said M. Zier & Company under appointment of the Floyd Circuit Court, of Floyd County, Indiana, has done such acts and so conducted itself as to give reasonable cause for the petitioner to believe that it will resist the order of the Court made herein, for the petitioner as Receiver of this Court to take charge and control of the property of said M. Zier & Company, and that it will disobey the order of the Court heretofore made herein, requiring it to deliver to the petitioner the property and effects of said M. Zier & Company.

The petitioner further represents that he has reason to believe that the Floyd Circuit Court of Floyd County, Indiana, and the Judge thereof will refuse to allow its

Receiver to obey the order of the Court made herein to take possession and control of the property and effects of said M. Zier & Company, and that be certain contempt proceedings will punish the petitioner in bankruptcy for taking any steps to have the said M. Zier & Company declared a bankrupt and for in any way interfering with the possession of said The New Albany Trust Company as Receiver of said property.

Petitioner further says that on the 14th day of February, 1903, said The New Albany Trust Company by W. W. Watts and J. R. Watts, their attorneys, and by Fred. Sauer, the Secretary, appeared in open court before the Hon. W. C. Utz, Judge of said Floyd Circuit Court, and filed its petition and report, a certified copy of which is filed herwith marked "Exhibit A" and made a part hereof; That thereupon after argument by said W. W. Watts the said Judge of said Court made and entered in said cause an order restraining and prohibiting the petitioners in bankruptcy herein from prosecuting the said cause in bankruptcy and from in any way molesting or interfering with the possesion of the said New Albany Trust Company as Receiver of said property of said M. Zier & Company, a copy of which order is filed herewith marked exhibit "B" and made a part hereof.

Wherefore your petitioner asks that he may be directed by an order of this Court what to do in the premises and what steps he shall take in order to obtain the possession of said property and for all necessary orders to govern his actions as such Receiver herein.

FREDERICK D. CONNOR,

Subscribed to and sworn to before me this 14th day of February, 1903.

WALTER G. HARRISON,

[SEAL.] *Notary Public.*

Com. expires Oct. 22 1905.

And afterwards, to-wit: On the 9th day of March, 1903, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled matter were had to-wit:

The petition of Inland Steel Company, a corporation, John C. Thurston and John Dey, doing business as Dey Time Register Company, that M. Zier and Company be adjudged a bankrupt within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered the said M. Zier & Company is hereby declared and adjudged bankrupt accordingly.

And at the same time, to-wit: On the 9th day of March, 1903, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above-entitled matter were had to-wit:

Whereas M. Zier and Company, a corporation of New Albany, in the County of Floyd and District aforesaid, on the 9th day of March, A. D. 1903, was duly adjudged a bankrupt upon a petition filed in this Court against him on the 6th day of February, A. D. 1903, according to the provisions of the Acts of Congress relating to bankruptcy.

It is therefore ordered that said matter be referred to Lawrence B. Huckeby, one of the referees in banbruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that said M. Zier and Company shall attend before said referee on the 1st day of April, A. D. 1903, at New Albany, and thenceforth shall submit to such orders as may be made by said referee or by this Court relating to said involuntary bankruptcy.

Pleas of the District Court of the United States for the District of Indiana, begun and holden at the United States Court House in the city of Indianapolis in said District, on the first Tuesday in November in the year of our Lord one thousand nine hundered and two, before Honorable Albert B. Anderson, Judge of said District Court.

United States
vs.
William W. Watts
and D. A. Sachs.
} No. 6377, Contempt.

Be it remembered that heretofore, to-wit, at the November term of said court on the 25th day of February, 1903, before Honorable Albert B. Anderson, Judge of said court, the following proceedings in the above-entitled cause were had, to-wit:

Comes now Joseph B. Kealing, Esq., United States Attorney, and files an Information in the above entitled cause in the words following to-wit:

UNITED STATES OF AMERICA,
District of Indiana.
} ss.

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF INDIANA.

November Term A. D. 1902, at Indianapolis.

Now comes Joseph B. Kealing, Attorney of the United States in and for the District of Indiana, who prosecutes for the said United States in this behalf in his own proper person and in the name and on behalf of the said United States, alleges, informs and declares as follows, to-wit: that in a certain proceeding in bankruptcy in the said District of Indiana, to-wit, in the matter of M. Zier & Co., bankrupts, case No. 37 in the said court pending at New Albany, Indiana, certain orders and decrees had been made by the said Uuited States District Court, the Hon. Albert B. Anderson presiding Judge, whereby Frederick D. Connor was appointed receiver

to take charge of the property, goods, wares and merchandise of the said M. Zier & Co., bankrupts aforesaid, that he had qualified as such receiver and had lawfully taken possession of the said property aforesaid then and there situated at New Albany, under and by virtue of the said order made by the court aforesaid, all of which more fully appears in the affidavit herewith and upon which this information is based. That on the 20th day of February, A. D, 1903, that Raymond J. Morris, Claude Sittason, Thomas Smithwick, Charles D. Kelso, William W. Watts and D. A. Sachs, whose given name is unknown to the affiant who made said affidavit, and to the Attorney for the United States herein, did then and there wrongfully, unlawfully, knowingly and forcibly take from the said Frederick D. Connor, receiver as aforesaid, the property, goods and chattels of M. Zier & Co., and then and there withhold wrongfully, knowingly and unlawfully the possession and custody of said property from the said Frederick D. Connor, receiver as aforesaid, well knowing at the time that he was lawfully appointed receiver of the said United States District Court aforesaid, and then and there knowingly, wrongfully, unlawfully and wilfully disregard and disobey the orders and decrees of the said court, all of which more fully appears in the accompanying affidavit, which is made a part hereof, whereby they are each guilty of contempt of this court, contrary to the form of the statutes and against the peace and dignity of the United States.

JOSEPH B. KEALING,
United States Attorney.

UNITED STATES OF AMERICA,
District Court of Indiana.

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF INDIANA.

BEFORE THE HONORABLE ALBERT B. ANDERSON, *Judge:*

In the matter of M. Zier & Company, against whom an action in Bankruptcy has been filed.

Comes now Clarles D. Kelso, the Receiver of M. Zier & Company under the appointment of the Honorable William C. Utz, Judge of the Floyd Circuit Court of Indiana, and Charles D. Kelso, individually, and for answer to the respective rules against him in the said above and foregoing entitled cause of action to show cause why he should not redeliver the property of the said M. Zier & Company into the possession and custody of Frederick D. Connor as Receiver of the said District Court of Indiana, sitting in Bankruptcy, and also to show cause why he should not be punished for contempt for the violation of the orders of said Court heretofore made in said above-entitled cause of action, says:

That on the 30th day of December, 1902, Joseph T. Ryerson & Son, as plaintiffs, commenced an action in the Floyd Circuit Court of Indiana against M. Zier & Company on several certain notes, then and there due, and demanded judgment against the defendant in the sum of fifteen thousand dollars ($15,000); that in said complaint it was shown that the said M. Zier & Company was indebted in the sum of sixty-five thousand dollars ($65,000) and was unable to meet its obligations and that the creditors of the said M. Zier & Company threatening to enter suits against it;

that said defendant was then and there without means and money with which to continue the operation of its business, that by said complaint the said plaintiff prayed for the appointment of a Receiver, that on said 30th day of December, 1902, the said complaint was by the said plaintiff in said cause carried to the Hon. William C. Utz, Judge of said Floyd Circuit Court, and the Hon. William C. Utz, as such Judge of said Court, was then and there requested and moved by the said plaintiff to appoint a Receiver for the said defendant, M. Zier & Company; that the said M. Zier & Company agreed to said application for the appointment of a Receiver and consented that said Judge of said Court might appoint a receiver therefor; that upon said day and upon consideration the said Judge of said Court entered a Vacation Order in said cause granting the application of said plaintiff in said cause for the appointment of a Receiver, and thereupon appointed the New Albany Trust Company as Receiver of the said M. Zier & Company, a certified copy of which order, marked "Exhibit A," is filed herewith attached hereto and by this reference thereto made a part of this Respondent's answer herein.

That the said New Albany Trust Company immediately on said day duly qualified as said Receiver and then and there took upon itself the duty of said Receivership, a certified copy of which acceptance and qualification of said Receiver, marked "Exhibit B," is filed herewith, attached hereto and by this reference thereto made a part of this respondent's answer herein.

That the said Floyd Circuit Court of Indiana and the Judge thereof in vacation were by the statutes of the State of Indiana delegated full and plenty power to appoint Receivers; that said Floyd Circuit Court and the Judge thereof are respectively the Constitutional Court and the Consti-

tutional Officer and made so by the Constitution of the State of Indiana.

That immediately thereafter the said New Albany Trust Company gave notice of its appointment as such Receiver in a newspaper printed and published in the City of New Albany, Floyd County, Indiana; that said Receiver made out an Inventory of the property of said M. Zier & Company which it had taken possession of upon its appointment as such on the said 30th day of December, 1902, and caused the same to be appraised, which inventory and appraisement was filed in the said Floyd Circuit Court, and that said Inventory showed that the appraised value of said property was about twenty-eight thousand and five hundred dollars ($28,500).

That on the 16th day of January, 1903, the said Receiver filed in the Floyd Circuit Court its report and petition wherein it sought the advice and instruction of said Court with respect to the continuance of the operation of said plant and prayed the court that a time be fixed for the hearing of said report and petition, and further praying that the said M. Zier & Company and its officers and the creditors of the said M. Zier & Company be notified by mail and by application of the time and place of the hearing of this report and petition, and requesting said creditors to appear and make known their recommendations or objections to the continuance of the operation of the plant of M. Zier & Company; that said petition further prayed that all cred-creditors of M. Zier & Company be required to prove their claims against this estate by filing proof thereof with this Receiver or by intervening petition in this cause, and that all creditors and persons be restrained and enjoined from prosecuting suits involving this estate in any manner except by intervening petition in this action. And thereupon and

upon consideration of this petition, the said Floyd Circuit Court made a certain order, a certified copy of which, certified under the Act of Congress, marked "Exhibit C," is filed herewith and by this reference thereto made a part of this answer of the respondent herein.

That on the 24th day of January, 1903, the time fixed for the hearing of the above-mentioned reports and the several matters involved therein, it was made to appear to said Court by the said Receiver that all the creditors of the said M. Zier & Company, as shown by the books of the said M. Zier & Company, had been notified by said Receiver to be present on said 24th day of January, 1903, and heard on said matters, and the following-named creditors being present in person or by attorney, to-wit:

"(See Exhibit C.)"

a copy of which last-mentioned order is now filed with this response and made a part hereof by reference thereto and marked "Exhibit D," and that by said last-mentioned order all creditors and other persons were enjoined and restrained from prosecuting the claims or suits against this estate except by intervention in this cause or by first obtain-leave of the said Floyd Circuit Court.

That the said Receiver of the said M. Zier & Company by the authority of the Floyd Circuit Court continued the operation of said plant of M. Zier & Company until the 14th day of February 1903, when at that time it filed in Floyd Circuit Court its petition wherein it showed to the Court that the Inland Steel Company, John C. Thurston and the Dey Time Register Company, as creditors of said M. Zier & Company, had filed a petition in the United States District Court of the District of Indiana, sitting in Bankruptcy, praying for an order of Involuntary Bankruptcy and that said Floyd Circuit Court, then and there, on said 14th day

of February, 1903, authorized said Receiver to proceed to Indianapolis, Indiana, and there by limited appearance and by protestation against appearance only, by petition upon such appearance upon appearance only, lay before the said District Court of the United States for the District of Indiana the facts with regard to the matters herein, which order of said Court is filed herewith, marked "Exhibit E," and by reference thereto made a part of this respondent's answer herein.

That afterwards and on the same day, to-wit, the 14th day of February, 1903, in said cause of action, John T. Ryerson & Son versus M. Zier & Company, then and there depending in the Floyd Circuit Court of Indiana, Frederick D. Connor, as Receiver, by George H. Hester, his attorney, and by leave and order of the said Floyd Circuit Court and upon his own motion, made himself a party to the said proceeding in the matter of the receivership of said M. Zier & Company, then and there depending in said Floyd Circuit Court, and thereupon and said 14th day of February, 1903, filed in the said Floyd Circuit Court, by leave of said Court, his verified petition showing his appointment as Receiver of M. Zier & Company by order of the United States District Court for the District of Indiana and praying the said Floyd Circuit Court for an order requiring the said New Albany Trust Company as Receiver of said M. Zier & Company, to turn over and surrender to him, the said Frederick D. Connor as Receiver in Bankruptcy, the property of said M. Zier & Company, to which the New Albany Trust Company, Receiver of said M. Zier & Company, under the orders of the Floyd Circuit Court had custody; and that the matter of said petition was continued in the said Floyd Circuit Court until the next term thereof, a certified copy of which proceedings by the said Frederick D. Connor in said Floyd Circuit Court

and the order showing his intervention in said cause, is filed herewith, marked "Exhibit F," and by this reference thereto is made a part of this respondent's answer herein.

That afterwards, to-wit, on the 19th day of February, 1903, before the Honorable William C. Utz, sole judge of said Court in vacation, W. W. Watts, as attorney for the New Albany Trust Company as Receiver for M. Zier & Company, appeared and filed before said Judge of said Court a written statement, which the Judge of said Court, after considering the same, refused to concur therein and found that the matters and facts therein stated showed that said W. W. Watts had been guilty of contempt of court and the said Judge ordered that a rule be issued against the said W. W. Watts to appear before him on the 21st day of February at 3 o'clock P. M. and show cause, if any he has, why he should not be punished for contempt; that said respondent now files with his answer herein a certified copy of the said statement of said Attorney W. W. Watts, filed and set out, together with a certified copy of the action of the said Judge thereon, which certified copy is attached hereto and marked "Exhibit G," and by this reference thereto is made a part of this respondent's answer herein.

That on the said 19th day of February, before the Hon. William C. Utz, Judge of said Floyd Circuit Court, in vacation, the New Albany Trust Company as Receiver for said M. Zier & Company tendered to the Judge of said Floyd Circuit Court its written resignation as said Receiver, and the Judge, after reading said tender of resignation, held that the matters therein set forth showed that said Receiver was in contempt of Court and then and there ordered that a rule issue at once against said Receiver to appear before the said Judge of said Court on the 21st day of February at 3 o'clock P. M. and show cause, if any he had or can, why

it should not be punished for contempt of Court, a certified copy of which written tender of resignation, together with the action of the Judge of said Court, thereon is attached hereto and marked "Exhibit H," and by this reference thereto is made a part of this respondent's answer herein.

That afterwards, to-wit, on the 20th day of February, 1903, the United States Tube Company, D. A. Sachs, its attorney, filed before the judge of said Court, its verified statement, wherein it prayed said Judge to remove said New Albany Trust Company from its trust as Receiver of M. Zier & Company; that said New Albany Trust Company appeared to said petition and avowed before the said Judge of said Court that it had surrendered the possession of the said property of said M. Zier & Company to Frederick D. Connor without the leave of said Court; that thereupon said Judge of said Court refused to accept the resignation of the said New Albany Trust Company as said Receiver, and then and there entered an order removing said Trust Company as said Receiver and in its place and stead appointed the respondent, Charles D. Kelso, as its successor, in the matter of the receivership of said M. Zier & Company; that this respondent immediately qualified as said Receiver and gave bond in the sum of thirty thousand dollars ($30,000) to the approval of the Judge of said Floyd Circuit Court; that this respondent was then and there ordered by the Judge of the said Floyd Circuit Court to demand of the said New Albany Trust Company and of the said Frederick D. Connor the immediate possession of the property of the said M. Zier & Company, which came into the hands of the said New Albany Trust Company as a Receiver herein, and that if the said New Albany Trust Company or the said Frederiek D. Connor shall fail and refuse to immediately turn over and surrender the possession of said assets to said Receiver, the

Judge of said Court ordered this Receiver to immediately report such refusal and failure to surrender said assets to said Judge for further action in the premises, all of which more fully appears from the certified copy of said petition of the United States Tube Company and the action of said Judge thereon, which is attached hereto and marked "Exhibit I," and by this reference thereto made a part of this respondent's answer herein.

That afterwards on the said 20th day of February, 1903, in obedience to the order of said Court, this respondent as Receiver of M. Zier & Company called upon the New Albany Trust Company and demanded that possession of all the assets of M. Zier & Company which came into its hands as Receiver thereof be surrendered to him, and that said Trust Company failed and refused to surrender the possession of the same for the reason that it claimed that it had turned over the Plant of the M. Zier & Company to said Frederick D. Connor; that for the other assets of said M. Zier & Company it intended to account forthwith to the said Judge of the said Floyd Circuit Court; that thereupon this Respondent as Receiver of M. Zier & Company, in further obedience to the order of said Judge, called upon the said Frederick D. Connor at his home in the City of New Albany, Indiana, and demanded of him the possession of all the property of said M. Zier & Company which had been turned over to him by the said New Albany Trust Company; that said Frederick D. Connor failed and refused to turn the same over to this Respondent. This Respondent says that he reported said facts last above recited to the Floyd Circuit Court on the said 20th day of February, 1903, and upon making said report the said Judge of said Court, upon consideration of said report, found that said Frederick D. Connor had been intermeddling with the assets of said estate, and it was there-

upon considered ordered and adjudged by the said Judge of said Court that a summary writ be issued, directed to the Sheriff of Floyd County, Indiana, requiring the said Sheriff to immediately seize and take into his possession and deliver over to the said Charles D. Kelso, Receiver of M. Zier & Company, all the property of the said M. Zier & Company which Fredrick D. Connor now has in his possession, which consists of the plant of M. Zier & Company, located at the corner of Pearl and Oak Streets, in the City of New Albany, including all tools, machinery, manufactured iron, scrap iron, appliances and other personal property therein situated, books, papers, accounts and choses in action, and that said Sheriff was by said order required to execute said writ forthwith, and upon the execution of said writ to make his return to the Judge of said Floyd Circuit Court, all of which last-mentioned proceedings appear more fully from the certified copy thereof, attached hereto and marked "Exhibit J," filed herewith and by this reference thereto made a part of this respondent's answer herein.

That this Receiver is informed and so states the fact to be that a writ was issued by the said Floyd Court of Indiana in compliance with the aforesaid order of the Judge of said Court and delivery to the Sheriff of Floyd County, Indiana, for execution: That said writ was delivered to said Sheriff on the 20th day of February, 1903, and was on the same day executed by him by seizing and taking from Frederick D. Connor the property described in said writ: that after the said Sheriff had taken said property from the said Frederick D. Connor, the said Sheriff, in obedience to the commands of said writ, delivered the same to this respondent, as receiver, under the appointment of said Judge as aforesaid, and not otherwise.

This respondent says that he did not take said property from said Connor, whether as receiver or otherwise, by force

or otherwise, but that his sole connection with said property was, as aforesaid, in receiving the same from the Sheriff of Floyd County, Indiana, under and in pursuance and in obedience to the orders of said Judge of said Floyd Circuit Court, and that his holding of said property is solely as receiver under said appointment and pursuant to and in obedience to the orders of the Judge as aforesaid and in no other capacity or manner whatever.

Respondent shows that at and prior to the time of his appointment as receiver, and at and prior to the doing of facts herein averred, this respondent was an officer of the Floyd Circuit Court, to-wit: an attorney at law, admitted to practice therein, and, as such subject to the orders of said court in all lawful matters that might be ordered by said court; that while he has been engaged in the practice of his profession in this honorable court, and, as such, an officer thereof, he has had scant experience in the bankruptcy practice, and prior to his appointment as receiver had no occasion to inform himself of the price lines of demarkation between the jurisdiction of the courts of the state of this court.

Respondent further says that in the city of New Albany and in the city of Louisville, and in the vicinity thereof, one D. A. Sachs, a member of the bar of the Louisville Courts and of the United States District,Circuit and Supreme Courts, has enjoyed for a long time the reputation of a competent, skilled and reputable lawyer, and especially familiar with the proceedings in bankruptcy matters, which reputation was known to this respondent, and as this respondent is informed and believes, was known to the Hon. William C. Utz, Judge as aforesaid, and that by the direction of said Judge this respondent, upon his appointment and qualification as receiver, employed said Sachs as his counsel in said

matters, and was in all respects guided by his opinion and advice, save in so far as he had explicit orders and directions from the Judge.

Respondent further says that all of his acts and doings in the premises were done not individually but as a receiverof said M. Zier & Co., as an officer of the Floyd Circuit Court, under the direction and in obedience to the orders of the Judge of said Court as aforesaid, and that as an individual and separate and distinct from his position as receiver, he has had and has now no connection whatever with said plant and has done nothing in the premises.

This respondent further says that long prior to the appointment of this respondent as receiver and the acts subsequent thereto, the Floyd Circuit Court, by its receiver, was in the actual, peacable and undisputed control and possession of the above and foregoing property and that the jurisdiction of the Floyd Circuit Court had attached over the person of said M. Zier and the subject-matter of said action by the voluntary appearance of said M. Zier & Co. to the complaint filed as herein shown by Joseph T. Ryerson & Son long prior to the time when the proceedings in involuntary bankruptcy above referred to were commenced in this honorable Court, and long prior to the passage of the amendment to the bankruptcy law approved on the 5th day of February, 1903.

He respectfully submits that at the time of the criminal appointment of a receiver for said M. Zier & Co. by the Judge of the Floyd Circuit Court, said Judge could not without a violation of his oath of office and his duties as such Judge, have refused to appoint such receiver, and through said receiver to take possession of said property, and that by reason thereof the said possession so taken of said property and plant of said M. Zier & Co. by said Court, through its

receiver, was not wrongful or illegal, but was legal and rightful, and that if it ever thereafter became wrongful or illegal, it became so solely by reason of the fact, as your respondent is informed by cousel in whose judgment and opinion he relies, because of the amendment to said Bankruptcy Act enacted and approved on the 5th day of February, 1903, and that by reason of the fact that said amendment to said Act was not and is not retrospective by said of said property, through its receiver, continued to be rightful and in accordance with the statutes of the United States in such a case made and provided.

This respondent further shows that upon the delivery to him by the Sheriff of the possession of said property, he employed one Thomas Smithwick as custodian thereof and placed him in charge of said property as such custodian, to the end that it might be cared for and preserved, and he submits to the court that the appointment by him of said Smithwick as custodian was not wrongful nor illegal unless the orders of said Judge of the Floyd Circuit Court, as aforesaid, were without jurisdiction and consequently void. And he asks that his return to said rule be taken and held by the court as the return not only for himself as receiver and as an individual, but for and on behalf of said Smithwick.

This respondent further submits to the court that if the possession of said property by said Floyd Circuit Court through its receiver, was valid and binding and if said Circuit Court had jurisdiction over the person of said defendants and of the subject-matter of said action, and consequently of said property, as this respondent is advised and believed by counsel that it had, its receiver so originally appointed, to-wit: the New Albany Trust Co., had no right, warrant or authority whatever, without the approval of

said Floyd Circuit Court, or the Judge thereof in vacation, to abandon or surrender the possession of said property or any portion thereof, to any other person without the consent, approval and order of the Floyd Circuit Court or the Judge thereof, in vacation, and this respondent avers that the surrender to said Connor, whether as receiver of this Honorable Court or otherwise, by said New Albany Trust Company, was not authorized by said Floyd Circuit Court and was without authority of law, unless said Floyd Circuit Court had originally no jurisdiction of the subject-matter of said action or had lost jurisdiction thereof by reason of the amendment to the Bankruptcy Act approved February 5th, 1903, or by reason of the pendency of the proceedings in bankruptcy herein.

This respondent further says that he has never at any time intended to violate any of the orders of this court, or in any wise interfere with its jurisdiction or the possession of said property by this Court, through its receiver or otherwise, but has only intended and endeavored to obey the orders of the Floyd Circuit Court and of the Judge thereof in the premises in matters in which he was at the time advised by his counsel he was compellable to obey such orders.

If upon the foregoing facts it shall appear to this court that he has in anywise or manner interfered with its jurisdiction, he submits that he does so upon the advice of counsel selected for him by the Judge by whom he was appointed, and upon whose advice and opinion he relied, and not with any intention or purpose whatever of interfering with the lawful orders of this court or its process, or of showing any disrespect to this court, the Judge thereof, its jurisdiction or orders, and if upon the foregoing facts this court shall be of the opinion that the Circuit Court, either originally had no jurisdiction of the subject-matter of said action or there-

after lost jurisdiction thereof by reason either of the amendment to said Bankruptcy Act of the 5th of February, 1903, or by reason of any of the orders that have been made by this court, and that because thereof this respondent ought to be directed as such receiver or otherwise, to surrender the possession of said property to said Connor as receiver of this court, or to this court, he respectfully submits that an order in that behalf ought to be made by this court, to the end that he might file and plead the same in said Floyd Circuit Court and to the Judge thereof as a justification for his conduct and doings in the premises, to the end that he may not be or appear to be in contempt or the orders of said Floyd Circuit Court or the judge thereof, and to the end that there should be no apparent controversy between this Honorable Court and said Floyd Circuit Court over said property or any matters whatever connected therewith, and that upon the entering of such order he may be discharged hence, or that the Court may make such other and further orders in the premises as may to the court appear just and proper and equitable in the premises.

WILLIAM A. KETCHAM,
Solr. for Respondents.

Thomas Smithwick respectfully shows to the Court that so far as he has any knowledge, information or belief upon the subject, his connection with the matters herein are set forth in the above and foregoing return, and he asks that the same be accepted as his return, to the proceedings herein. THOS. SMITHWICK.

Personally appeared before me, a Notary Public, the above-named Thomas Smithwick, and acknowledged the foregoing facts to be true as he verily believes.

ARTHUR F. SHAFER,
[SEAL.] *Notary Public.*

My commission expires Dec. 20, 1904.

Charles D. Kelso respectfully shows to the Court that so far as he has any knowledge, information or belief upon the subject, his connection with the matters herein are as set in the above and foregoing return, and he asks that the same may be accepted as his return to the proceedings herein.

CHARLES D. KELSO.

Personally appeared before me, a Notary Public, the above-named Charles D. Kelso and acknowledged the foregoing facts to be true as he verily believes.

ARTHUR F. SHAFER,

[SEAL.] *Notary Public.*

My commission expires Dec. 20, 1904.

UNITED STATES OF AMERICA, } ss.
District of Indiana. }

IN THE DISTRICT COURT OF THE UNITED STATES.

FOR THE DISTRICT OF INDIANA.

BEFORE THE HONORABLE ALBERT B. ANDERSON, *Judge:*

In the matter of M. Zier & Company, against whom a petition for adjudication in Bankruptcy has been filed. } In Bankruptcy.

Come now Claude Sittason, deputy sheriff of Floyd County, Indiana, and Claude Sittason, individually, and for answer and response to the rule issued herein do show cause why he should not redeliver the property of M. Zier

& Company to Frederick D. Connor, receiver of this Court, and also for answer and response to the rule to show cause why he should not be attached in contempt of this Honorable Court, most respectfully says:

That on the first day of January, 1903, he was duly appointed by Raymond J. Morris, the then acting and legally qualified sheriff of Floyd County, as his deputy sheriff; that he immediately qualified as such deputy sheriff and since then he has been acting as such deputy sheriff. He further says that on the 20th day of February, 1903, there was issued out of the Floyd Circuit Court, under the hand of the Clerk and seal of said Court, directed to the sheriff of Floyd County, Indiana, a writ in the words and figures following, to-wit:

STATE OF INDIANA.

To the Sheriff of Floyd County:

Greeting.

By order of the Honorable William C. Utz, Judge of the Floyd Circuit Court, which order was made in vacation, you are hereby commanded and required to forthwith take from Frederick D. Connor the possession of the boiler plant of M. Zier & Co., situated on the northeast corner of Pearl and Oak Streets in the City of New Albany, Indiana, together with all the tools, machinery, appliances, books, papers, accounts, choses in action, and all other personal property belonging to said M. Zier & Company and found in the premises of said M. Zier & Company at said point in the city of New Albany, Indiana, being the same property wrongfully and without leave of this Court surrendered to Frederick D. Connor by the New Albany Trust Company, formerly receiver of M. Zier & Company, and you are further required

by the order of said Judge of said Court to forthwith deliver said above-described property to Charles D. Kelso receiver of said M. Zier & Company, and of this writ make due service and immediate return thereof.

Witness, Charles B. Scott, Clerk of the Floyd Circuit Court, and the seal hereto affixed at the Court House in the City of New Albany, this 20th day of February, 1903.

CHARLES B. SCOTT,
[SEAL.] *Clerk of the Floyd Circuit Court.*
By William F. Ruoff,
Deputy.

That said writ immediately came to the hands of Raymond J. Morris, sheriff of Floyd County, Indiana; and that when said writ so came to the hands of said Raymond J. Morris, as such sheriff of Floyd County, said Morris, as such sheriff, notified this respondent as his deputy to go with him as a witness while he executed said writ. That he thereupon accompanied said Raymond J. Morris, as such sheriff of Floyd County, to the residence of Frederick D. Connor while said Morris as such sheriff served said writ by reading the same and by delivering a certified copy thereof to said Frederick D. Connor. That thereupon said Raymond J. Morris went to the plant of M. Zier & Company at Pearl and Oak Streets in the City of New Albany and County of Floyd; and upon the order and request of said Sheriff this respondent went with him. That said property at the time was in the possession of and control of one Charles Davis, and said sheriff thereupon told said Davis of his official authority who thereupon turned said property over to said Morris. That under the order and direction of said Morris, this respondent, as his deputy, remained in possession of said property for about ten minutes while said Morris as such sheriff went to

the Judge's room of the Floyd Circuit Court and reported the fact that he had so taken possession of said property; that at the end of about ten minutes said Morris returned and delivered the possession of said property into the hands of Charles D. Kelso, who claimed to have been appointed receiver of said property by the Floyd Circuit Court, and to whom said Morris by said writ and by the Judge of said Court was ordered and directed to deliver said property.

This respondent further says that he had nothing to do with the procuring of said order or with the issuing of said writ. That this respondent was subject to the orders of said Raymond J. Morris as sheriff of Floyd County, Indiana, and that he ignorantly and innocently believed that it was his right and duty to assist said Morris in the execution of said writ in the manner set out as aforesaid. That he acted in the utmost good faith, believing that it was his sworn duty as such deputy sheriff to do what he did do under said writ; that he believed that if he failed to do it, he would be subject to fine and punishment by the Floyd Circuit Court and to removal from his office. That this respondent believed that said order was valid on its face, and that all of his acts and doings thereunder were ignorantly and innocently done and performed without any intention of committing a contempt against the dignity, authority, judgments and processes of this Honorable Court, and wholly in the belief that it was the duty of the respondent to do and perform said acts.

Said respondent further says that he does not attempt to justify the acts of the Floyd Circuit Court in the premises; that he was not a party to the same; and that he had nothing to with the procuring of said proceedings or the issuing of said writ; that he neither advised nor counseled the same; that he regrets exceedingly the complications that

have arisen in this matter, and he regrets exceedingly the acts that he has done under said writ. He says that he stands ready and willing to do all that is within his power to remedy and rectify the acts and proceedings done by him under said writ.

Said respondent further says that for himself as an individual he has done and performed none of the acts complained of and that the same were all done and performed by him as the deputy sheriff of Floyd County, Indiana, under and by virtue of said writ and order so issued out of the Floyd Circuit Court, and under and by virtue of the orders of his superior, Raymond J. Morris, sheriff of Floyd County, Indiana.

Wherefore, said Claude Sittason, as sheriff of Floyd County, Indiana, and said Claude Sittason, as an individual, asks to be dismissed from the rules issued therein.

EVAN B. STOTSENBURG,
JOHN H. WEATHERS,
Attorneys for respondent.

UNITED STATES OF AMERICA,

STATE OF INDIANA.

Claude Sittason being duly sworn, upon his oath says that he is the respondent in the above-entitled matter and that the facts set out in said response are true as he is informed and verily believes.

CLAUDE A. SITTASON.

Subscribed and sworn to before me this 25th day of February, 1903.

NOBLE C. BUTLER,
Clerk.

UNITED STATES OF AMERICA,

UNITED STATES OF AMERICA, }
District of Indiana. } *ss.*

IN THE DISTRICT COURT OF THE UNITED STATES,

For the District of Indiana.

BEFORE THE HONORABLE ALBERT B. ANDERSON, *Judge.*

In the matter of M. Zier & Company, against whom a petition for adjudication in Bankruptcy has been filed. } In Bankruptcy.

Come now Raymond J. Morris, Sheriff of Floyd County, Indiana, and Raymond J. Morris, individually, and for answer and response to the rule issued herein to show cause why he should not redeliver the property of M. Zier & Company to Frederick D. Connor, Receiver of this court, and also for answer to the rule to show cause why he should not be attached for contempt of this honorable Court, most respectfully says:

That he was elected sheriff of Floyd County, Indiana, at the general election held in November, 1902, and that he took his office on the first day of January ,1903; and since that time he has been the duly elected, qualified and acting sheriff of said county of Floyd and State of Indiana. He further says that by the provisions of Sections of 5868 of the Revised Statutes of 1881 of said State of Indiana, the duties of this respondent as sheriff are defined and fixed as follows, to-wit:

"§5868. Duties.—Such Sheriff shall be a conservator of the pease within his county; shall arrest, without process, all persons who, within his view, shall commit any crime or misdemeanor, take them before the nearest Justice of the Peace of the county, and detain them in custody until the cause of such arrest has been investigated; suppress all breaches of the peace within his knowledge, having hereby given him authority to call to his aid the power of the county; pursue and commit to the jail of the county all felons; execute all process directed to him by legal authority, either in person or by deputy; attend upon and preserve order in all Courts of record in his county, except Justice's Courts; take care of the jail and the prisoners therein; and serve all process directed to him from the Circuit Court or from the Board of Commissioners, according to law.

That according to the provisions of said statute this respondent innocently and ignorantly believed that it was his duty to serve any and all order issued out of the Floyd Circuit Court, of which Court he was and is the sheriff, without regard to the legality of said writs or of the apparent fairness thereof. That on the 20th day of February, 1903, this respondent was absent on official duty in the County of Harrison and State of Indiana, until about six o'clock P. M. of said day; that upon his arrival home and at his office, he was informed by his deputy to be before the Judge of the Floyd Circuit Court sitting in chambers at seven o'clock P. M. of said day; that he reported to said Judge as required by said notice, and thereupon the Clerk of the Floyd Circuit Court delivered to him, under his hand and seal of office, the following writ from the Hon. William C. Utz, who was the sole and presiding Judge of the Floyd Circuit Court, to-wit:

"STATE OF INDIANA.

To the Sheriff of Floyd County:
Greeting.

By order of the Honorable William C. Utz, Judge of the Floyd Circuit Court, which order was made in vacation, you are hereby commanded and required to forthwith take from Frederick D. Connor the possession of the boiler plant of M. Zier & Co., situated on the northeast corner of Pearl and Oak Streets, in the City of New Albany, Indiana, together with all the tools, machinery, appliances, books, papers, accounts, choses in action and all other personal property belonging to said M. Zier & Company and found in the premises of said M. Zier & Co. at said point in the city of New Albany, Indiana, being the same property wrongfully and without leave of this court surrendered to said Frederick D. Connor by the New Albany Trust Company, formerly receiver of M. Zier & Co., and you are further required by the order of said Judge of said Court to forthwith deliver said above-described property to Charles D. Kelso, receiver of said M. Zier & Co., and of this writ make due service and immediate return thereof.

Witness, Charles B. Scott, Clerk of the Floyd Circuit Court, and the seal hereto affixed at the Court House in the City of New Albany, this 20th day of February, 1903.

Charles B. Scott,
[SEAL.] *Clerk of Floyd Circuit Court.*
By William Ruoff,
Deputy."

That said writ required this respondent, as sheriff of Floyd County, Indiana, to take possession of the boiler plant of M. Zier & Co., together with all the tools, machinery,

appliances, books, papers, accounts, choses in action, and all other personal property belonging to said M. Zier & Company, and deliver the same to Charles D. Kelso, appointed receiver by said Floyd Circuit Court.

This respondent further says that he had nothing to do with the procuring of said order or with the issuing of said writ. That since he has been the sheriff of Floyd County he has been consulting Evan B. Stotsenburg, a regular practicing attorney of the Floyd Circuit Court, as his legal adviser in matters affecting his official conduct; that as soon as he received said writ he telephoned to said Evan B. Stotsenburg to ask his opinion as to what his duties were under said writ; that he ascertained that said Evan B. Stotsenburg was confined to his bed by sickness, and that he was unable to, and did not, and could not procure his advice. That thereupon this respondent, ignorantly and innocently believing that it was his right and duty to execute said writ according to its terms, and acting in good faith and with pure motives, and with no intention of insulting this Court or defying its orders, judgments, and processes, executed said writ by reading the same to and within the presence and hearing of said Frederick D. Connor at his home in the City of New Albany, Indiana, and also by delivering to him a certified copy of said writ. That upon said Connor refusing to deliver possession of said property described in said writ, this respondent thereupon went upon said property and demanded the same from the possession of one Charles Davis, who was in possession thereof, and from whom this respondent learned that he was in possession of the same as agent and representative of said Connor. That upon this respondent notifying said Charles Davis of the fact that he was sheriff of Floyd County, Indiana, and of the fact that he had said writ, said Charles Davis, upon

the demand of this respondent, delivered said property over to this defendant, who thereupon put his deputy, Claude Sittason, in temporary possession thereof. That after this respondent had so put his deputy in possession of said property, he verbally reported to said Honorable William C. Utz, Judge of the Floyd Circuit Court, what he had done: and asked for further instructions in the matter. Thereupon he was informed by the Honorable William C. Utz, as such Judge, that it was his duty to fully execute said writ by turning said property over to Charles D. Kelso, who had been appointed receiver thereof by said Honorable William C. Utz, as such Judge. That thereupon in obedience to said writ and command of said Judge, and ignorantly and innocently believing that it was his duty to do so, he turned over said property to said Charles D. Kelso, as such receiver, who has ever since had possession of said property. That thereupon this respondent, as such sheriff, made the following return to said writ:

"This writ came to hand at eight o'clock P. M. on the 20th day of February, 1903, and I have served the same by reading the within to and in the presence and hearing of Frederick D. Connor, and delivering to him a certified copy of the same; and the said Connor refused to deliver the possession of the property described in the within writ, whereupon I seized and took possession of the within described property and have turned the same over to Charles D. Kelso, receiver of M. Zier & Company.

"Dated this 20th day of February, 1903. Served in Floyd County, Indiana.

RAYMOND J. MORRIS,
Sheriff of Floyd County, Indiana."

That without justifying or attempting to justify the action of the Floyd Circuit Court in the premises, he is informed and believes that said Floyd Circuit Court purported to so act in the premises by the provisions of Section 1226 of the Revised Statutes of Indiana of 1881, which provides:

"§1226. Failure to deposit—Order to Sheriff. Whenever, in the exercise of its authority, a Court, or the Judge thereof in vacation, shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the Court or the Judge, besides punishing the disobedience as for contempt, may make an order requiring the Sheriff to take the money or thing, and deposit it or deliver it in conformity with the direction of the Court or Judge thereof."

But be that as it may this respondent says that in all things done by him in the premises he acted in the utmost good faith, believing that it was his sworn duty as such sheriff to execute said writ so issued out of said Court according to its terms, and that if he failed to do so, he would be subject to fine and punishment by the Court, to removal from his said office, to punishment under the criminal laws of the State of Indiana, and to impeachment. That this respondent believed that said order was valid upon its face, and that all his acts and doings thereunder were ignorantly and innocently done and performed without any intention of committing a contempt against the dignity, authority, judgments and processes of this Honorable Court, and wholly in the belief that it was the duty of this respondent to do and perform said acts. This respondent further says that he does not attempt to justify the acts of the Floyd Circuit Court in the premises, that he was not a party to the same, that he had nothing to do with the procuring of said proceedings, or the issuing of said writ, that he neither

advised nor counseled the same, that he regrets exceedingly the unfortunate complications that have arisen in this manner, and he regrets exceedingly the acts that he has done under said writ. He says that he stands ready and willing to do all that is within his power to remedy and rectify the proceedings and acts done and performed by him under said writ. This respondent further says that since he performed and did the acts above set out under said writ, he has been informed by his counsel that when he ascertained that said property was in the hands of the receiver of this Court, he should have appeared in this Court and presented his writ and the authority under which he was purporting to act, for the consideration of the Court.

This respondent further says for himself as an individual he has done and performed none of the acts complained of, but that the same were all done and performed by him as sheriff of Floyd County, under and by virtue of said writ and order so issued out of the Floyd Circuit Court.

Wherefore, said Raymond J. Morris, as sheriff of Floyd County, Indiana, and said Raymond J. Morris as an individual, ask to be dismissed from the rules issued against him herein.

EVAN B. STOTSENBURG,
JOHN H. WEATHERS,
Attorneys for respondent.

UNITED STATES OF AMERICA, }
State of Indiana. } *ss.*

Raymond J. Morris, being duly sworn upon his oath, says that he is respondent in the above-entitled matter, and that the facts set out in said response are true as he is informed and verily believes; and further says not.

RAYMOND J. MORRIS.

Subscribed and sworn to before me this 25th day of February, 1903.

NOBLE C. BUTLER,
Clerk.

And thereupon replications are filed to the foregoing answers, in the words following, to-wit:

Comes now the petitioner, Frederick D. Connor, Receiver, and files for reply to the answer and showing made by Charles D. Kelso, and in behalf of Thomas Smithwick to the charge of wrongfully keeping the possession of the property of said bankrupts from the possession and control of the receiver, denies each and every material allegation therein contained.

GEO. H. HESTER,
Atty. for Petitioner.

Comes now the petitioner Frederick D. Connor, Receiver, and for reply to the answer and showing made by Raymond J. Morris, the sheriff of Floyd County, Indiana, to the charge against him of wrongfully taking the property of said bankrupt from his possession and control and for contempt of this court, denies each and every material allegation therein contained.

GEO. HESTER,
Atty. for Petitioner.

Comes now the petitioner Frederick D. Connor, Receiver, and for reply to the answer and showing of Claude Sittason, deputy sheriff, in the charge of contempt of this court in taking wrongful possession of the property of said bankrupt, denies each and every material allegation contained in his said answer.

GEO. H. HESTER,
Atty. for Petitioner.

And this cause coming on to be tried, and the court having heard a part of the evidence herein, doth now adjourn until 9 o'clock to-morrow morning.

And afterwards, to-wit, at the November Term of said Court, on the 26th day of February, 1903, before Honorable Albert B. Anderson, Judge of said court, the following further proceedings in the above-entitled cause were had, to-wit.

Comes now Joseph B. Kealing, United States Attorney, and the defendants in person and by their attorneys also come, and the court having further heard the evidence herein doth now adjourn until 9 o'clock to-morrow morning.

And afterwards, to-wit, at the November Term of said Court, on the 27th day of February, 1903, before Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above-entitled cause were had, to-wit:

Comes now Joseph B. Kealing, United States Attorney, and at the same time also comes said defendant Charles D. Kelso in person, and by counsel, and this cause coming on to be further heard, is now submitted to the court upon the evidence; and the court being sufficiently advised doth find that said defendant is guilty of the contempt charged.

It is therefore considered by the Court that said defendant, Charles D. Kelso, for the offense charged be imprisoned and confined in the jail of Marion County, Indiana, for the term of sixty days, and that he do pay unto the United State, the cost of this proceeding, taxed at $. . . ., and that he do stand committed until said costs are paid.

Comes now Joseph B. Kealing, United States Attorney, and at the same time also comes Raymond J. Morris, in person and by counsel, and this cause coming on to be further heard, is now submitted to the court upon the evidence; and the court being sufficiently advised doth find that said defendant is guilty of the contempt charged.

It is therefore considered by the court that said defendant, Raymond J. Morris, for the offense charged be imprisoned

and confined in the jail of Marion County, Indiana, for the term of twenty days, and that he do pay unto the United States the cost of this proceeding, taxed at $. . . . , and that he do stand committed until said costs are paid.

Comes now Joseph B. Kealing, United States Attorney, and at the same time also comes Claude Sittason in person and by counsel, and this cause coming on to be further heard, is now submitted to the court upon the evidence; and the court being sufficiently advised doth find that said defendant is guilty of the contempt charged.

It is therefore considered by the court that said defendant, Claude Sittason, for the offense charged be imprisoned and confined in the jail of Marion County, Indiana, for the term of ten days, and that he do pay unto the United States the cost of this proceeding, taxed at $. . . . , and that he do stand committed until said costs are paid.

Comes now Joseph B. Kealing, United States Attorney, and at the same time also comes Thomas Smithwick in person and by counsel, and this cause coming on to be furthur heard, is now submitted to the court upon the evidence; and the court being sufficiently advised doth find that said defendant is guilty of the contempt charged.

It is therefore considered by the court that said defendant, Thomas Smithwick, for the offense charged be imprisoned and confined in the jail of Marion County, Indiana, for the term of ten days, and that he do pay unto the United States the cost of this proceeding, taxed at $. . . . , and that he do stand committed until said costs are paid.